FILE COPY

PETITION NOT PRINTED

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1960.

No. 182

BERNARD WILSON, PETITIONER,

vs.

DONALD F. SCHNETTLER, ARTHUR E. DOLL and ROBERT E. WALTZ,

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 9, 1960.
CERTIORARI GRANTED JUNE 27, 1960.

Supreme Court of the United States

OCTOBER TERM, 1960.

No. 182

BERNARD WILSON, PETITIONER,

vs.

DONALD F. SCHNETTLER, ARTHUR E. DOLL and ROBERT E. WALTZ,

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

INDEX

	Original	Print
Record from the U.S.D.C. for the Northern District of Illinois, Eastern Division		
Transcript of proceedings of October 7, 1959	1	1
Appearances	1	1
Colloquy between court and counsel	2	2
Reporter's and clerk's certificates (omitted in printing)	11a	6
Amended petition for declaratory judgment	12	7
Motion to dismiss	19	10
Order dismissing amended petition for declaratory judgment	20	11
Proceedings in the U.S.C.A. for the Seventh Circuit	21	12
Opinion, Grubb, J.	21	12
Judgment	28	19
Clerk's certificate (omitted in printing)	29	19
Order granting motion for leave to proceed in forma pauperis and granting petition for writ of certiorari	30	20

[fol. 1] (File Endorsement Omitted)

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 59 C 1569

BERNARD WILSON, PETITIONER

vs.

DONALD F. SCHNITTLER, ARTHUR F. DOLL and ROBERT E. WALTZ, RESPONDENTS

TRANSCRIPT OF PROCEEDINGS OF OCTOBER 7, 1959

had in the above-entitled cause before the Honorable JULIUS H. MINER, one of the Judges of said Court, in his court room in the United States Court House at Chicago, Illinois, on October 7, 1959, at 10:00 o'clock, A.M.

APPEARANCES:

GERALD W. GETTY, ESQ., Public Defender of Cook County, Illinois;
JAMES J. DOHERTY, ESQ., Assistant Public Defender; (2600 South California Avenue, Chicago, Illinois),

on behalf of Petitioner;

[fol. 2] HON. ROBERT TIEKEN,
United States Attorney, by
JOHN PETER LULINSKI, ESQ.,
Chief Appellate Division, and
ROBERT N. CAFFARELLI, ESQ.,
Assistant United States Attorney,
(450 U.S. Court House, Chicago 4, Ill.)

on behalf of Respondents

Donald F. Schnettler,
Arthur F. Doll and
Robert E. Waltz
United States Treasury Department
Federal Bureau of Narcotics
(433 West Van Buren Street,
Chicago, Illinois.)

[fol. 3] (And thereupon the following proceedings were had herein:—

COLLOQUY BETWEEN COURT AND COUNSEL

BY THE CLERK: No. 59 C 1569, Bernard Wilson versus Donald F. Schnittler, et al.

Motion to set cause for hearing.

Your Honor, counsel asked that this be passed.

BY THE COURT: Very well.

(Thereupon the Court gave attention to other matters on the call, after which the following further proceedings were had herein:—)

BY THE CLERK: No. 59 C 1569, Bernard Wilson versus Donald F. Schnittler, et al.

Motion to set cause for hearing.

BY MR. LULINSKI: Good morning, your Honor.

BY MR. GETTY: Good morning, your Honor.

Counsel has pointed out that I have not affirmatively stated my jurisdictional grounds.

Will your Honor give me leave to amend?

BY THE COURT: I have forgotten now the case; I know you talked to me about it in chambers.

BY MR. GETTY: The Rea case, your Honor.

[fol. 4] Oh, this is Bernard Wilson.

BY THE COURT: This is not the same case we talked about?

BY MR. GETTY: Yes, it is, Judge.

BY THE COURT: What is it? What is the case about?

BY MR. GETTY: I was asking the Court to—

BY THE COURT: Oh, you are the one who gave me that citation?

BY MR. GETTY: Yes, Rea. The Rea citation.

BY THE COURT: I beg pardon?

BY MR. GETTY: The Rea, R-e-a, citation.

BY THE COURT: Yes, Rea.

Now, tell me something about it. Just refresh my recollection.

BY MR. GETTY: You mean this case or the Rea case?

BY THE COURT: What this case is about.

BY MR. GETTY: This case involves three federal agents, arresting a man without a warrant.

BY THE COURT: This is the reverse of the other case where they—

BY MR. GETTY: No. The only difference, Judge, is this, that they by-passed this District Court, and they [fol. 5] went over to the State court and they indicted him. The three federal men testified there. Now, the Federal Rules of Criminal Procedure are ignored. They pay no attention to them whatsoever over there.

In the Rea case the Supreme Court of the United States says the federal agent owes a duty to obey those federal rules, and that it is up to the District Court, sitting, to enforce those rules.

BY THE COURT: This is where you are asking for a declaratory judgment?

BY MR. GETTY: Yes, Judge.

Now, counsel has pointed out one thing, that the only reason I ask for a declaratory judgment is this, Judge, that in the Rea case, since they had been in the District Court, and there had been a hearing, counsel knew what his Honor's thinking was in that case, and knew that his Honor would suppress the evidence.

Now, in this case, I cannot be that presumptuous. I think that your Honor would suppress the evidence if you heard it. But the only way to ask you to hear it, as I see it, is to ask you under the declaratory judgment section, to hold a hearing, and ascertain, did they, in [fol. 6] fact, obey the federal rules that they should have obeyed?

Now, counsel points out that I hadn't made certain jurisdictional allegations, which is basic.

I will ask for a week to amend, to put those jurisdictional allegations in this complaint.

By the Court: When I said that counsel submitted an authority, I think he came into my chambers to ask for a preliminary order.

By Mr. Getty: Yes, we changed our mind, and we gave notice to bring it down here.

By the Court: You represent whom?

By Mr. Lulinski: I represent the agency, your Honor. My name is Lulinski. I am the head of the Appeal Division of the United States Attorney's office. I represent the three involved agents.

By the Court: I will give him leave to amend.

I would like him to a file a— Are you going to make a motion to strike?

By Mr. Lulinski: Well, your Honor, on discussing it with counsel this morning—and I don't know if your Honor has specifically read the complaint or not—I called [fol. 7] his attention to the fact that nowhere in the complaint is there any affirmative allegation of jurisdiction.

The cause, I assume, from reading the complaint, is predicated primarily upon a violation, I take it it was of the Fourth Amendment, by way of an illegal search and seizure, and the only jurisdictional allegation to support that in the complaint is a fleeting reference to Section 2201 of the Judicial Code.

Section 2201, of course, as your Honor is familiar, is our declaratory judgment section. And I think it requires no citation on my part—it has been ruled on many times, that the declaratory judgment section is only adjective law; it does not confer jurisdiction upon a Court to hear a cause of action.

I suggested to counsel that possibly the appropriate section, as it may or may not be, depending upon his view of the matter,—might be the Federal Question Section, Section 1331 of the Judicial Code.

By the Court: Frankly, I am not as well versed as you are, and you are too fast for me. I would have to sit down and examine it and read it. I am not following [fol. 8] it as clearly as you think I am.

But I will say this: When I first glanced through the Rea case, there is something in my mind that bothered me. I wasn't quite sold on it. I have forgotten now what it was, and I would have to refresh my recollection.

By Mr. Getty: I know what it is. I made a note of it.

By the Court: I may have told you or I may not have told you.

By Mr. Getty: I remember it.

By the Court: What was it?

By Mr. Getty: You said that there was a case in here the other day where you found an addict guilty.

By the Court: I said that this is just the reverse of the other case.

By Mr. Getty: Yes. That is it. You found a man guilty and you gave him the minimum.

By the Court: I was shocked to learn that that is the law of the Seventh Circuit, that the government—when the State suppresses evidence—

By Mr. Getty: Yes, that was it.

By the Court: That that evidence can be turned over to the federal government. And if the federal govern-[fol. 9] ment had no knowledge of its procurement illegally it may prosecute.

And our Seventh Circuit sustained that theory of law. And I rebelled against it. I found him guilty.

I stated in the record that I hoped some day they would review that situation and reverse themselves.

Now, this is just the reverse of it. Now you are saying that they by-passed it here and used it over there—by-passed it here without any hearing. And for me to have anticipated at the time that that is what might have happened in this court, if evidence were heard, would be presumptuous on my part at that stage of the game. And I wasn't impressed with the Rea case because that was not a declaratory judgment.

By Mr. Getty: That is true. That was an injunction.

By the Court: All right, now I recall the situation as I get it.

You amend your complaint.

You file a motion to strike, and file your briefs with it, and let him answer it, and I will learn all about it.

By Mr. Lulinski: Very well, your Honor.

[fol. 10] Your Honor is declaring the obverse of the so-called "Silver Platter Doctrine", which we have briefed many times in this court and in the Court of Appeals.

By the Court: Pardon me. I don't know what the "Silver Platter Doctrine" is.

By Mr. Lulinski: Well, that is the doctrine of where a violation of State law appears in the course of an arrest, but that does not preclude its use in the federal court.

By the Court: Let the record show that you are talking to a novice, so we will get down to the academic principles.

By Mr. Lulinski: Yes, your Honor, very well.

By Mr. Getty: How many days?

By the Court: Twenty days.

By Mr. Getty: For me to amend?

By the Court: Yes.

By Mr. Getty: I will amend in a week.

By the Court: One week, then.

By Mr. Lulinski: We will take ten days to file our response to your pleadings, if your Honor wants to set it down for hearing.

By the Court: On the briefs.

By Mr. Lulinski: Set it down on briefs?

[fol. 11] By the Court: Yes, I think so. And if I want to hear from you further, I will notify you.

By Mr. Lulinski: All right; thank you, your Honor.

By Mr. Getty: Does your Honor want a brief in support of my amended complaint?

By the Court: Yes. He will decide whether he wants to file a motion to strike, and if he does he will submit briefs. And you will have time to answer. Let's understand it now, without any order of Court: He may file his briefs and you can have ten days to answer.

By Mr. Getty: All right, Judge, thank you.

By Mr. Lulinski: Thank you, your Honor.

* * * * *

[fol. 11A] Reporter's and Clerk's Certificates to foregoing transcript omitted in printing

[fol. 12] (File Endorsement Omitted)

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 59 C 1569

(Title Omitted)

AMENDED PETITION FOR DECLARATORY JUDGMENT—
Filed October 16, 1959

Now comes BERNARD WILSON, by his attorney Gerald W. Getty, Public Defender of Cook County, Illinois, by James J. Doherty, Assistant Public Defender, and petitions this Honorable Court pursuant to the provisions of Title 28, U.S.C.A., Section 2201 to:

1. Hold a hearing and to determine by declaratory judgment whether the respondents DONALD F. SCHNETTLER, ARTHUR E. DOLL and ROBERT E. WALTZ, federal narcotic agents, obeyed the Federal Rules of Criminal [fol. 13] Procedure when they arrested your petitioner BERNARD WILSON without a warrant on April 14th, A.D. 1959, at which time the respondents searched your petitioner and found certain narcotic drugs on his person, and

2. In the event that this Honorable Court finds that the search and seizure of your petitioner was illegal, that the Court impound the narcotic drugs seized pursuant to the provisions of Title 28 U.S.C.A., Section 2463, and that the Court perpetually enjoin the respondent federal narcotic agents from testifying in respect to the narcotic drugs so seized in the state criminal proceeding now pending in the Criminal Court of Cook County, Illinois entitled *People of the State of Illinois* v. *Bernard Wilson*, Indictment No. 59-2319.

In support of this Petition, your petitioner alleges:

1. Jurisdiction of this Honorable Court is based upon the supervisory powers of Federal Courts over federal law enforcement agencies.

2. Your petitioner is a citizen of the United States. [fol. 14] 3. That he was arrested by the respondent federal narcotic agents ARTHUR E. DOLL and ROBERT E. WALTZ on April 14th A.D. 1959 at about 7:30 A.M.; that he was searched by the respondents; that he was not shown a search warrant at any time; that a certain amount of narcotic drugs was seized from his person.

4. That subsequent to such search and seizure your petitioner was taken under arrest by the respondent federal agents and incarcerated in the Cook County Jail on a charge of unlawful possession of narcotic drugs. He was not taken before a United States Commissioner.

5. That your petitioner was thereafter in the July Term A.D. 1959 indicted by the Grand Jury of Cook County, Illinois, and charged with the crime of Unlawful Possession of Narcotic Drugs, i.e. the same narcotic drugs seized by the respondent federal agents.

6. That your petitioner was duly arraigned and entered a plea of not guilty on the 31st day of July A.D. 1959.

[fol. 15] 7. On the 3rd day of August A.D. 1959, your petitioner moved to suppress the evidence and a hearing was held in the Criminal Court of Cook County, Illinois, at which time the following facts and circumstances were developed:

(a) The respondents testified that they had a certain building under surveillance where they had information that narcotic drugs were being sold.

(b) That the respondents saw your petitioner approach the said building and enter the same; that a short time later they observed your petitioner leave the building whereupon they arrested him.

(c) That they could not state under oath whether he had the narcotic drugs in his possession before he entered the building under surveillance or not; that when they arrested him, they did not have a warrant for his arrest.

[fol. 16] 8. The motion to suppress the evidence was denied.

9. In determining the question of illegal search and seizure in the Criminal Court of Cook County, Illinois, the law of the forum was applied and the Federal rules of Criminal Procedure were not applied.

10. There is now pending in the Criminal Court of Cook County, Illinois a criminal case against the petitioner entitled *People of the State of Illinois vs. Bernard Wilson,* Indictment No. 59-2319, charging your petitioner with Unlawful Possession of Narcotic Drugs, i.e. the same narcotic drugs seized from your petitioner by the respondent federal agents; that your petitioner verily believes and therefore states the fact to be that the respondents will be called to testify in such case that the petitioner unlawfully had in his possession the narcotic drugs seized by the respondents on April 14th A.D. 1959.

WHEREFORE, your petitioner prays:

1. That this Honorable Court hold a hearing pursuant [fol. 17] to the provisions of Title 28, U.S.C.A., Section 2201, and determine by declaratory judgment whether the respondent federal narcotic agents DONALD F. SCHNETTLER, ARTHUR E. DOLL and ROBERT E. WALTZ acted in conformity with the strict standards imposed upon them by the Federal Rules of Criminal Procedure when they arrested and searched your petitioner.

2. That in the event that this Honorable Court finds that the search and seizure of your petitioner was illegal, that the Court impound the narcotic drugs seized pursuant to the provisions of Title 28 U.S.C.A., Section 2463, and that the Court perpetually enjoin the respondent federal narcotic agents from testifying in respect to the narcotic drugs so seized in the state criminal proceeding now pending in the Criminal Court of Cook County, Illinois entitled *People of the State of Illinois* v. *Bernard Wilson,* Indictment No. 59-2319.

/s/ Bernard Wilson
Petitioner

[fol. 18] *Duly sworn to by Bernard Wilson. Jurat omitted in printing.*

* * * *

[fol. 19] (File Endorsement Omitted)

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

(Title Omitted)

MOTION TO DISMISS—Filed October 26, 1959

Now come the Respondents, DONALD F. SCHNETTLER, ARTHUR E. DOLL, and ROBERT E. WALTZ, by their attorney, R. TIEKEN, United States Attorney for the Northern District of Illinois, under Rule 12(b) of the Federal Rules of Civil Procedure, and move the Court as follows:

1. To dismiss the action because the petition fails to state a claim upon which relief may be granted.
2. To dismiss on the ground that the Court lacks jurisdiction over the subject matter of the action.
3. To dismiss this action or in lieu thereof quash service of process because the Attorney General of the United States has not been served.

/s/ R. Tieken
United States Attorney

• • • •

[fol. 20] IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

No. 59 C 1569

(Title Omitted)

ORDER DISMISSING AMENDED PETITION FOR DECLARATORY JUDGMENT—Nov. 16, 1959

This cause coming on for hearing on the respondents' motion to dismiss the amended petition for declaratory judgment the parties come by their attorneys, and the Court being duly advised it is

ORDERED that said motion be and it hereby is allowed and that the amended petition for declaratory judgment be and it hereby is dismissed, and it is

FURTHER ORDERED that leave be and hereby is given to petitioner to proceed in forma pauperis and to file a notice of appeal as a poor person and that the Clerk of this Court prepare and transmit the Record on Appeal to the United States Court of Appeals for the Seventh Circuit, without prepayment of fees and costs.

[fol. 21] IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 12856

SEPTEMBER TERM, 1959—JANUARY SESSION, 1960

BERNARD WILSON, PETITIONER-APPELLANT

v.

DONALD F. SCHNETTLER, ARTHUR E. DOLL and ROBERT E. WALTZ, RESPONDENTS-APPELLEES

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

OPINION—March 21, 1960

Before SCHNACKENBERG and KNOCH, *Circuit Judges*, and GRUBB, *District Judge*.

GRUBB, *District Judge*. Petitioner, Bernard Wilson, appeals in *forma pauperis* from an order of the district court dismissing his amended petition for declaratory judgment wherein he prayed for a determination of the legality of his arrest and search without a warrant by the respondent federal narcotics agents. In the event the court found the search and seizure in violation of the requirements of the Federal Rules of Criminal Procedure, petitioner requested it to impound the seized narcotics and to perpetually enjoin respondents from testifying in respect thereto in a pending criminal proceeding in the Criminal Court of Cook County, Illinois.

The allegedly illegal arrest and search wherein respondents obtained narcotic drugs from the person of petitioner occurred on April 14, 1959, at 7:30 a.m. Wilson [fol. 22] was thereafter indicted and charged by the Grand Jury of Cook County, Illinois, with the crime of Unlawful Possession of Narcotic Drugs. After his arraignment and plea of not guilty in the Criminal Court of Cook County, Illinois, that court denied petitioner's

motion for suppression of the evidence obtained in the search and seizure.

Petitioner alleges that the following facts were developed at the hearing of the motion to suppress in the State court: The federal narcotics agents saw Wilson enter a certain building under surveillance where they had information that narcotic drugs were being sold. A short time later the agents observed him leaving the building. They then arrested and searched him without a warrant. The agents could not state under oath whether or not Wilson had narcotic drugs in his possession before he entered the building under surveillance.

Thereafter, petitioner, who is presently incarcerated in Cook County jail awaiting trial on the State charge, commenced the proceeding in the district court in question here.

Petitioner contends that the district court has jurisdiction of the subject matter of this proceeding under the court's "supervisory power over federal law enforcement agencies." He relies on *Rea* v. *United States*, 350 U.S. 214 (1956).

Decisive factual differences distinguish the *Rea* case from the instant proceeding. In *Rea* the tainted evidence was seized under invalid process of a federal court. There a United States commissioner issued the invalid warrant. The federal officials acted under color of the defective process. They disobeyed the Federal Rules of Criminal Procedure, promulgated by the Supreme Court and enacted as law by Congress.[1] A federal district court had previously ordered the suppression of the illegally obtained evidence in a then pending criminal action.

In the instant proceeding the arrest and search were without warrant. A State court has denied a motion to suppress the seized narcotics as evidence in a criminal action pending before it. There was no exertion of authority, lawful or otherwise, by a United States commis- [fol. 23] sioner or by any official acting under color of federal judicial authority. No federal court has been

[1] Title 18 U.S.C.A., Chapter 237, as amended, Rules of Criminal Procedure.

asked to admit in evidence the narcotic drugs obtained by seizure. The contraband drugs are not in the possession or custody of an officer of a federal court.

This case squarely raises the question asked by the dissenting minority in *Rea*: "Would the Court's decision have been different had there been no search warrant at all?" 350 U.S. 214, at 219.

The foundation of the *Rea* decision lies in the power of the federal judiciary to supervise federal law enforcement agencies acting pursuant to federal process or orders of federal courts. Principles governing the scope and applicability of the exercise of federal judicial supervision over all federal judicial proceedings to the end of a fair and orderly administration of criminal justice have been developed and established by a line of leading decisions.[2]

The supervisory power, implemented by federal rules governing procedure and evidence, commands the exclusion as evidence of the fruits of invasions of federal constitutional immunities against unlawful detention and unreasonable searches and seizures. The sanctions of exclusion do not have constitutional stature: they are not a command of the Fourth or Fifth Amendment. The reach of federal judicial sanctions is limited by the boundaries of the federal judicial supervisory power. The sanction may, therefore, be wielded against all federal law enforcement agencies as, for example, the federal courts and their officers, United States Commissioners, or other federal officials, whenever these agencies or officers are acting pursuant to federal judicial authority.

Congress and the federal judiciary generally have refrained from interfering with the internal affairs of the States in the administration of justice, subject to review by federal courts of any federal questions involved. *Douglas* v. *City of Jeannette*, 319 U.S. 157 (1943). The admissibility of evidence is a matter to be decided by the trial court where it is sought to be introduced in the

---

[2] See *Wise* v. *Henkel*, 220 U.S. 556 (1911); *Weeks* v. *United States*, 232 U.S. 383 (1914); *McNabb* v. *United States*, 318 U.S. 332 (1943); and *Wolf* v. *Colorado*, 338 U.S. 25 (1949).

[fol. 24] light of constitutional principles and rules of evidence of the forum. The State court still has a right to protect all constitutional rights of the petitioner in ruling on the admissibility of evidence and in other ways upon the disposition of the case in that court. While searches and seizures or detentions, if unreasonable, may be in violation of the Constitution of the United States, the admission of unlawfully obtained evidence is not a denial of due process under the Fourteenth Amendment. See *Wolf* v. *Colorado*, 338 U.S. 25 (1949).

Principles of noninterference in State criminal affairs have been predicated on constitutional grounds and considerations of policy in balancing federal and State interests. The distinction that the illegal evidence was obtained by the activities of State and not federal officials is not material. The misconduct of federal officers may subject them to criminal penalties.[3] Unless these officers act under color of judicial authority or order of the federal courts, they are not subject to the federal judicial supervisory power, and the sanctions wielded by this power cannot intrude to restrain their testimony in a State criminal trial.

Without repudiating established principles governing the application of judicial supervision, *Rea* has extended the scope of the discretionary authority. It permits this power, acting on officials subject to it, to reach contemplated evidence in a pending State criminal action. The *Rea* decision is predicated on the authority to exercise supervision over federal officials only insofar as these officials act under color of federal judicial authority and owe obedience to the federal rules. The facts and the legal authority on which the *Rea* decision is based do not permit the conclusion that the court thereby intended to assume jurisdiction over all activities of the federal law enforcement authorities. We do not interpret the *Rea* decision as indicating that the Supreme Court holds that federal courts should directly or *indirectly* supervise or control the action of State courts on evidentiary problems while cases are pending in the State courts.

---

[3] Cf. Title 18 U.S.C.A. § 2236, Searches without warrant.

There are other traditional remedies to protect federal constitutional rights.

[fol. 25] Respondent federal narcotics agents may have acted in violation of the Fourth Amendment and of the due process clause of the Fourteenth. They did not do so under color of federal judicial authority. The admission of the allegedly illegally seized narcotics has not been sought in a federal court. The contraband evidence is not under the jurisdiction of a federal court.[4]

Notwithstanding the reference in Rule 41(e)(1) to property "illegally seized without warrant," the activities of respondents are not within the scope of the federal criminal rules which govern procedure "*in the courts of the United States and before United States commissioners* • • •." (Emphasis added.) Rule 1, Federal Rules of Criminal Procedure. Whatever remedies petitioner may have for the alegedly illegal conduct of the agents, these do not include the relief prayed for. There is no statutory or decisional authority directing the restraint by the federal courts of the officer's proposed testimony in a State criminal action, or the impounding of the narcotic drugs, where the criticized activities of these officers were not and have never been brought within the effective sphere of federal judicial supervision.

Considerations of policy would constrain the denial of a discretionary exercise of judicial supervision in this case were such power vested in the federal courts. By enactment of the Narcotic Control Act of 1956, Congress has shown its growing concern with the problem of use and traffic in narcotic drugs. As part of this legislation, Congress has charged the Secretary of the Treasury to join with the States in the suppression of the abuse of narcotic drugs by cooperating "in the institution and prosecution of cases in the courts of the United States and before • • • courts of the several States, • • •." Title 21 U.S.C.A. § 198. Congress has further conferred statutory

[4] The statute providing for impounding of evidence seized under any revenue law of the United States, Title 28 U.S.C.A. § 2463. Property taken under revenue law not repleviable, does not independently create jurisdiction. Its operation depends on possession or control over the contraband by an officer of the court.

authority on federal narcotic agents, members of the executive branch of the government and not of the judiciary to execute warrants, and recognized the right of these officers to make arrests without warrant under certain circumstances. Title 26 U.S.C.A. § 7607. Further [fol. 26] legislative considerations giving rise to the passing of these statutes are set forth in the margin.[5]

[5] Narcotic Control Act of 1956, House Report No. 2388, U. S. Code, Cong. and Adm. News, 1956, p. 3274, at p. 3283:

"Because narcotic drugs and marihuana are small in volume and high in price, the enforcement program with respect to the elimination of the illicit traffic has required constant vigilance on the part of the responsible Federal agencies. It is the view of your committee that these Federal agencies are to be commended for the outstanding work they have done in this field. Because present law has proved inadequate and in some cases has placed serious obstacles in the path of enforcement officers your committee is recommending appropriate changes in the applicable statutes.

"For example, recent court decisions have tended, under certain circumstances, to furnish the criminal with a cloak of immunity to the detriment of society as a whole. These decisions have forced changes in recognized investigative procedures which have been sanctioned by the courts for many years. The narcotic traffickers, who are in most cases well organized professional racketeers, take full advantage of any limitations placed on enforcement officers. In some instances enforcement officers have been restricted in their right to arrest without a warrant, and to search and seize contraband before and after a valid arrest. The use of evidence of admissions and of confessions following an arrest has been curtailed. The enforcement officers have been required to secure an arrest warrant or a search warrant, even though circumstances indicate the impracticability of such a procedure. The delay involved in obtaining a warrant permits the destruction or removal of the narcotic evidence and allows the narcotic traffickers to escape prosecution for their crime. These and other restrictions on enforcement officers leave the public unprotected and give narcotic violators, especially the more reprehensible, larger racketeers and wholesalers, an advantage over law-enforcement officers in their efforts to combat the illicit narcotic traffic.

"Accordingly, your committee urges that the corrective measures provided in H.R. 11619 be enacted immediately to permit enforcement officers to operate more effectively. To this end H.R. 11619 would provide for (1) authorization for more effective searches and seizures in narcotic cases; (2) authority for Federal agents to carry firearms, to execute and serve warrants, and to make arrests without warrants for narcotic violations under

In the light of the expressed legislative concern for the gravity of the narcotics problem, the greater power conferred on federal narcotics agents, and the desire for closer federal and State relations within this context, interference by federal judicial intervention in a State criminal proceeding is not warranted. Intervention at this posture of the State case, in effect, would result in granting a federal review of an interlocutory State court order. The imminence of a trial on a narcotics charge is not such irreparable injury as demands injunctive relief [fol. 27] under principles of judicial supervision. Cf. *Douglas* v. *City of Jeannette*, 319 U.S. 157 (1943).

In view of this decision it becomes unnecessary to pass on the question of a jurisdictional defect arising from the allegedly improper service of process, *i.e.* the failure to serve the United States.

For the reasons stated herein, the order of the district court dismissing the amended petition is hereby

AFFIRMED.

---

certain circumstances; (3) a statutory method to grant immunity to witnesses in cases involving a violation of the narcotic or marihuana laws; (4) the United States to have the right of appeal from certain court orders granting a defendant a motion to suppress evidence or to return seized property; and (5) the strengthening of the applicable venue provisions so that venue in marihuana cases would lie within the jurisdiction in which a trafficker was apprehended as well as in the jurisdiction of acquisition."

[fol. 28] IN UNITED STATES COURT
OF APPEALS
FOR THE SEVENTH CIRCUIT

• • • •

No. 12856

BERNARD WILSON, PETITIONER-APPELLANT

vs.

DONALD F. SCHNETTLER, ARTHUR E. DOLL and ROBERT E. WALTZ, RESPONDENTS-APPELLEES

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

JUDGMENT—March 21, 1960

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED, in accordance with the opinion of this Court filed this day.

• • • •

[fol. 29] Clerk's Certificate to foregoing Transcript (omitted in printing)

[fol. 30] SUPREME COURT OF THE UNITED STATES

(Title Omitted)

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND GRANTING PETITION FOR WRIT OF CERTIORARI—June 27, 1960.

ON PETITION FOR WRIT OF CERTIORARI to the United States Court of Appeals for the Seventh Circuit.

ON CONSIDERATION of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 1042 and placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

June 27, 1960

☆ U. S. GOVERNMENT PRINTING OFFICE, 1960 561084 172

FILE COPY

Office-Supreme Court, U.S.
FILED
SEP 16 1960
JAMES R. BROWNING, Clerk.

PETITION NOT PRINTED

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. 182

BERNARD WILSON,

Petitioner,

vs.

DONALD F. SCHNETTLER, *et al.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITIONER'S BRIEF

GERALD W. GETTY,
Public Defender of Cook County,

JAMES J. DOHERTY,
Assistant Public Defender of Cook County,

2600 South California Avenue,
Chicago, Illinois,

Counsel for Petitioner.

INDEX

SUBJECT INDEX

	PAGE
PETITIONER'S BRIEF	1
Opinion Below	1
Jurisdiction	1
Questions Presented	2
Statutes Involved	2
Statement	2
Summary of Argument	4
Argument	4
Conclusion	10

CITATIONS

CASES:

Douglas v. *City of Jeannette*, 319 U.S. 157	8
Elkins v. *United States*, 264 U.S. 206	9
McNabb v. *United States*, 318 U.S. 332	5
Ponzi v. *Fessenden*, 258 U.S. 254	8
Ramirez v. *Lozoya*, 253 F. (2d) 85	6
Rea v. *United States*, 350 U.S. 214	4, 5, 6, 7, 8, 9
Rios v. *United States*, 364 U.S. 253	9
Stefanelli v. *Minard*, 342 U.S. 117	8
Wilson v. *Schnettler*, 275 F. (2d) 932	1
Wolf v. *Colorado*, 338 U.S. 25	8

STATUTES CITED

Federal Rules of Criminal Procedure, Rule 41 (e) (1)	2
United States Code, Title 28, Sec. 198 (a)	8
Title 28, Sec. 1254 (1)	1

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. 182

BERNARD WILSON,

Petitioner,

vs.

DONALD F. SCHNETTLER, *et al.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITIONER'S BRIEF

Opinion Below

Wilson v. Schnettler, 275 F.2d 932.

Jurisdiction

The judgment of the U.S. Ct. of Appeals, 7th Circuit, was entered on March 21, 1960. Jurisdiction of this Court was invoked under Title 28 U.S.C. Sec. 1254 (1) in a Petition for Certiorari filed April 9, 1960. Certiorari was granted June 27, 1960. The printed Transcript of Record was received by counsel for the appellant on August 18, 1960.

Questions Presented

1. Whether federal officers who illegally obtain evidence from a person should be restrained by the United States District Court from testifying solely with such evidence in a State criminal proceeding?

2. Where real tangible evidence is illegally obtained by federal officers should the United States District Court withhold such evidence from the State?

3. Where federal officers illegally obtain evidence from a person may such federal officers oust the District Court of its supervisory powers over federal law enforcement agencies by bringing a criminal charge against the person in a State court?

Statutes Involved

Rule 41 (e) (1), Federal Rules of Criminal Procedure:

> "A person aggrieved by an unlawful search and seizure may move the district court for the district in which the property was seized * * * to suppress for use as evidence anything so obtained on the ground (1) the property was illegally seized without warrant * * *"

Statement

On April 14, 1959 at about 7:30 A.M. the respondents arrested the petitioner and searched him without a warrant; they recovered a certain amount of narcotic drugs from his person.

Petitioner was not taken before a United States Commissioner but was lodged in the Cook County Jail.

Thereafter, petitioner was indicted by the Grand Jury of Cook County, Illinois, and charged with the crime of Unlawful Possession of Narcotic Drugs.

Petitioner was arraigned, entered a plea of not guilty, and moved to suppress the evidence.

On August 3, 1959, a hearing was held in the Criminal Court of Cook County, Illinois, at which time the respondents testified that they saw the petitioner enter a certain building under surveillance where they had information that narcotics were being sold. A short time later the federal agents observed him leaving the building. They then arrested and searched him without a warrant. The agents could not state under oath whether or not petitioner had narcotic drugs in his possession before he entered the building under surveillance.

The motion to suppress was denied, and in determining the question of illegal search and seizure the Federal Rules of Criminal Procedure were not applied.

Thereafter, petitioner commenced the proceedings in the District Court in question here. He alleged that jurisdiction of the District Court was based upon the supervisory powers of Federal Courts over federal law enforcement agencies. Through the procedural device of declaratory judgment, petitioner asked the District Court to hold a hearing and determine whether the respondent federal narcotic agents acted in conformity with the strict standards imposed upon them by the Federal Rules of Criminal Procedure when they arrested and searched the petitioner without a warrant. In the event that the District Court found the search and seizure in violation of the federal rules, petitioner requested it to impound the seized narcotics and to perpetually enjoin respondents from testifying in respect thereto in the pending criminal proceeding in the Criminal Court of Cook County, Illinois.

The District Court dismissed and the Court of Appeals affirmed.

Summary of Argument

1. Where federal agents arrest a citizen without a warrant and seize real tangible evidence from him, the citizen should be entitled, in a proper case, to a hearing by the United States District Court in order to determine whether the federal agents acted in conformity with the strict standards imposed upon them by the federal rules governing searches and seizures.

2. Federal agents should not be permitted to oust the District Court of its power of policing the requirements of the federal rules by the simple expedient of proceeding in the State court.

ARGUMENT

The appellant urges that this case be reversed on the rationale of *Rea* v. *United States*, 350 U.S. 214.

In the case at bar the Court of Appeals held:

> "Unless these (federal) officers act under color of judicial authority or order of the federal courts, they are not subject to the federal supervisory power, and the sanctions wielded by this power cannot intrude to restrain their testimony in a State criminal trial" (R. 15).

We are unable to find any such condition in the *Rea* case. In *Rea*, this Court held: "The obligation of the federal agent is to obey the Rules. They are drawn for innocent and guilty alike. They prescribe standards for law enforce-

ment. They are designed to protect the privacy of the citizen, unless the strict standards set for searches and seizures are satisfied. That policy is defeated if the federal agent can flout them and use the fruits of his unlawful act either in federal or state proceedings." 350 U.S. 214, 217, 218.

In the case at bar the Court of Appeals held:

> "This case squarely raises the question asked by the dissenting minority in *Rea*: 'Would the Court's decision have been different had there been no search warrant at all?' 350 U.S. 214, at 219" (R. 14).

Lifted from context this question might readily mislead a lower court, but, as it appears in context in the *Rea* dissent, the question was used as a conclusion to the dissenting minority's objection that the *Rea* case could not be brought within the *McNabb* doctrine.[1] (*McNabb* v. *United States*, 318 U.S. 332.)

It appears to us that the dissenting minority in *Rea* supplied three major premises from which they argued that the action taken by the majority was improper; that since *Rea* did not fit within any of the three supplied premises, it didn't fit anywhere. This dissent was answered by the majority opinion in *Rea*, and nowhere therein do we find the *United States Commissioner* in violation of the federal rules governing searches and seizures, but we do find the *federal agent* in violation of such rules. Therefore, we conclude that the evil condemned in *Rea* was the invasion of the privacy of the citizen in violation of the federal rules by the *federal agent*.

---

[1] With the utmost respect for the dissent, we hasten to submit that *McNabb* was cited by the majority in *Rea* only by way of comparison. (350 U. S. 214, 217: "Cf. *McNabb* . . . .")

We are not alone in this conclusion. In the case of *Ramirez* v. *Lozoya*, 253 F.2d 85, at page 89, the Court of Appeals for the Ninth Circuit held:

> "If the Federal officer proposes to testify solely with evidence illegally obtained, then *Rea* requires he be restrained on proper application. If the real tangible evidence * * * was seized illegally *Rea* would require that it be withheld from the State.
>
> * * * It has been established by the Supreme Court that society must pay the penalty of losing its evidence, if that evidence has been obtained by the heavy hand of Federal officers."

In the instant case the respondent federal officers did not seek the protection of a warrant, but took the law into their own hands and proceeded without one. We submit that this is a more flagrant flouting of the federal rules than that condemned in *Rea*. What is the greater flouting of the federal rules governing searches and seizures, seizure under a defective search warrant, or seizure under no warrant at all? Historically and logically the answer should be: Under no warrant. To hold otherwise is to say that the law governing searches and seizures has degenerated to a point where a law enforcement officer is better off without a warrant than he is with one. If all of the historical reasons underlying rules designed to protect the privacy of the citizen have eroded to such a point, then logic has triumphed over the facts of life. This Court knows that law enforcement officers will push the rules as far as the judiciary will permit.

After reciting the facts of the instant case, the Court of Appeals said the "respondent federal narcotic agents may have acted in violation of the Fourth Amendment and of the due process clause of the Fourteenth," but the door

to the District Court remains closed to the appellant because "they did not do so under color of federal judicial authority" (R. 16).

We are unable to understand such reasoning. How could the respondent federal agents violate the Fourth Amendment and the due process clause of the Fourteenth, without at the same time violating the federal rules governing searches and seizures?

This Court has said that the power of the federal courts extends to policing the requirements of such rules and making certain that they are observed. *Rea* v. *United States*, 350 U.S. 214, 217. But the instant decision holds that the District Court is powerless to police the requirements of the federal rules because the respondent federal agents did not get a warrant. This is an invitation to the federal agent to avoid the United States Commissioner; it tells the federal agent that he is better off not to get a warrant.

We cannot bring ourselves to believe that the policy enunciated in *Rea* could be rendered impotent by such a simple expedient.

Moreover, this decision points to the fact that, "The admission of the allegedly illegally seized narcotics has not been sought in a federal court" (R. 16).

If this is a fatal distinction, then again the federal policy announced in *Rea* can be easily defeated. This permits the federal agent, who owes obedience to the federal rules, to decide *IF* those federal rules will be enforced against him. It permits the federal agent to oust the District Court of its power of policing the requirements of the federal rules by the simple expedient of proceeding in the State court. Where the federal agent has acted in conformity with the strict standards imposed upon him by the federal rules, he

can proceed to prosecute in the District Court; where he has flouted the federal rules he can select a forum that condones his action. The choice is his. We submit that such distorted result is not in keeping with the underlying philosophy of *Rea*.

Where federal agents arrest a citizen without a warrant, and then by-pass the District Court and proceed to prosecute in a State court, 99 out of 100 such cases may properly come within the purview of 28 U.S.C. 198 (a) adjuring the Secretary of the Treasury to cooperate with the several states.

However, there is nothing in that section of the judicial code which authorizes a federal agent to act in disregard of the command of the federal rules governing searches and seizures, and in such cases the District Court should be open to the citizen whose privacy has been invaded. That is the only way to a uniform enforcement of the federal policy announced in *Rea*.

The Court of Appeals in the case at bar relied on *Douglas* v. *City of Jeannette*, 319 U.S. 157 (R. 14, 18), and cited *Wolf* v. *Colorado*, 338 U.S. 25 (R. 15), and the respondents have relied also on *Ponzi* v. *Fessenden*, 258 U.S. 254, and *Stefanelli* v. *Minard*, 342 U.S. 117. We respectfully submit that none of these cases are controlling because they did not involve illegal search and seizure by *federal agents*.

In the case at bar, the immediate relief prayed for was a hearing in the District Court to determine if the respondent federal agents had flouted the federal rules.

We recognize that the *Rea* case is not on "all fours" with the instant case. In *Rea* the appellant had the benefit of a prior federal judicial determination that the federal agents had violated the federal rules. In the case at bar, the appellant *alleges* that the federal agents have flouted

the federal rules, but he doesn't *know* that they have until a federal court says so. To hold this distinction decisive is tortuous; if we deal in principles instead of semantics, there is a distinction without a difference. Here, as in *Rea*, the ultimate relief prayed for is an injunction against the federal agents who owe obedience to the federal rules.

The federal policy announced in *Rea* in January, 1956, was to keep federal agents "clean" of illegally seized evidence. Since that time, the only question among legal scholars was how that policy could be reconciled with the "silver-platter doctrine" which was recently jettisoned by this Court's decision in *Elkins* v. *United States*, 364 U.S. 206, and *Rios* v. *United States*, 364 U.S. 253.

Therefore, we respectfully conclude that this Court's philosophy as regards illegally obtained evidence is:

(1) to exclude its use in federal courts where state or federal officers are involved, and

(2) to exclude its use in federal or state courts where federal officers are involved.

Denying this appellant a hearing in the District Court is repugnant to that philosophy.

Conclusion

For the reasons stated we submit that the judgment of the court below should be reversed.

Respectfully submitted,

GERALD W. GETTY,
Public Defender of Cook County, Ill.,

JAMES J. DOHERTY,
Assistant Public Defender,
Counsel for Appellant.

2600 South California Avenue,
Chicago 8, Illinois,
BIshop 7-6600

FILE COPY

Office-Supreme Court, U.S.
FILED
OCT 19 1960
JAMES R. BROWNING, Clerk

PETITION NOT PRINTED

No. 182

In the Supreme Court of the United States

OCTOBER TERM, 1960

BERNARD WILSON, PETITIONER

v.

DONALD F. SCHNETTLER, ARTHUR E. DOLL AND ROBERT E. WALTZ

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE RESPONDENTS

J. LEE RANKIN,
Solicitor General,
MALCOLM RICHARD WILKEY,
Assistant Attorney General,
BEATRICE ROSENBERG,
KIRBY W. PATTERSON,
Attorneys,
Department of Justice, Washington 25, D.C.

INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	1
Statutes involved	2
Statement	3
Summary of argument	4
Argument	8
I. The petitioner has alleged no misconduct by federal officers	10
A. The action of the federal officers in turning the evidence over to the state was proper and was not for the purpose of avoiding supervision by the federal courts	10
B. The complaint failed to set forth facts which would justify suppression of the evidence under federal law	13
II. The court properly exercised its discretion in denying relief	14
A. Injunctive relief was properly denied	17
B. The court also properly exercised its discretion in denying declaratory relief	22
Conclusion	26

CITATIONS

Cases:	
Ackerman v. *International Longshoremen's & Warehousemen's Union*, 187 F. 2d 860	19
Aetna Casualty & Surety Co. v. *Quarles*, 92 F. 2d 321	25
Aetna Life Insurance Co. v. *Haworth*, 300 U.S. 227	17, 23, 25
American Automobile Insurance Co. v. *Freundt*, 103 F. 2d 613	24
American Fidelity & Casualty Co. v. *Service Oil Co.*, 164 F. 2d 478	24
Beal v. *Missouri Pacific R. Corp.*, 312 U.S. 45	19
Brillhart v. *Excess Insurance Co.*, 316 U.S. 491	23

Cases—Continued

	Page
Carbide & Carbon Chemical Corp. v. *United States Industrial Chemicals*, 140 F. 2d 47	25
Chattanooga C. & St. L. R. Co. v. *Wallace*, 288 U.S. 249	25
Clark v. *Memolo*, 147 F. 2d 978	18
Clarke v. *Rist*, Fed. Cas. No. 2,816	19
Cline v. *Frink Dairy Co.*, 274 U.S. 445	16
Di Giovanni v. *Camden Fire Insurance Assn.*, 296 U.S. 64	25
Doby v. *Brown*, 232 F. 2d 504, certiorari denied, 352 U.S. 837	20
Douglas v. *City of Jeannette*, 319 U.S. 157	4, 14
Draper v. *United States*, 358 U.S. 307	18
Earl v. *Raymond*, Fed. Cas. No. 4,243	16, 17
Eccles v. *Peoples Bank*, 333 U.S. 426	13, 14
Elkins v. *United States*, 364 U.S. 206	16, 23
Federation of Labor v. *McAdory*, 325 U.S. 450	19
Fenner v. *Boykin*, 271 U.S. 240	24
Franklin Life Insurance Co. v. *Johnson*, 157 F. 2d 653	17
Great Lakes Dredge & Dock Co. v. *Huffman*, 319 U.S. 293	24
H. J. Heinz Co. v. *Owens*, 189 F. 2d 505	19
Harkrader v. *Wadley*, 172 U.S. 148	25
Hurley v. *Lindsay*, 207 F. 2d 410	16, 17
Kerotest Manufacturing Co. v. *C-O-Two Co.*, 342 U.S. 180	24
Maryland Casualty Co. v. *Boyle Construction Co.*, 123 F. 2d 558	24
Maryland Casualty Co. v. *Pacific Coal & Oil Co.*, 312 U.S. 270	19
Mayor & Corporation of York v. *Pilkington*, 2 Atk. 302, 9 Mod. 273	23
McLain v. *Lance*, 146 F. 2d 341, certiorari denied, 325 U.S. 855	17
Nashville, C. & St. L. Ry. Co. v. *Wallace*, 288 U.S. 249	24
National Cancer Hospital of America v. *Webster*, 251 F. 2d 466	19
Orton v. *Smith*, 18 How. 263	19
Peale v. *Phipps*, 14 How. 367	18
Peck v. *Jenness*, 7 How. 612	13, 14
People v. *La Bostrie*, 14 Ill. 2d 617, 153 N.E. 2d 570	13, 14
People v. *Tillman*, 1 Ill. 2d 525, 116 N.E. 2d 344	

Cases—Continued — Page

Ponzi v. *Fessenden*, 258 U.S. 254 — 15
Public Service Comm'n v. *Wycoff Co.*, 344 U.S. 237 — 16, 23
Ramirez v. *Lozoya*, 253 F. 2d 85 — 12
Randall v. *Howard*, 2 Black. 585 — 19
Rea v. *United States*, 350 U.S. 214 — 4, 5, 8, 9, 12
Spielman Motor Sales, Inc. v. *Dodge*, 295 U.S. 89 — 19
Stefanelli v. *Minard*, 342 U.S. 117 — 18, 20, 21, 25
Taylor v. *Taintor*, 16 Wall. 366 — 18
Toucey v. *New York Life Insurance Co.*, 314 U.S. 118 — 17, 18
Tuckson v. *Clemmer*, 231 F. 2d 658 — 25
Watson v. *Buck*, 313 U.S. 387 — 19
Western Contracting Corp. v. *National Surety Corp.*, 163 F. 2d 456 — 25
Western Supplies v. *Freeman*, 109 F. 2d 693 — 25
Williams v. *Benedict*, 8 How. 107 — 19
Wolf v. *Colorado*, 388 U.S. 25 — 22

Constitutions and statutes:

United States Constitution:
Fourth Amendment — 6, 12, 20
Fourteenth Amendment — 22
Illinois Constitution, Art. II, sec. 6 — 12
Act of June 14, 1930, 46 Stat. 585 — 10
Civil Rights Act, 42 U.S.C. 1983 — 20
1 Stat. 335, now 28 U.S.C. 2283 — 17
21 U.S.C. 198(a) — 2, 10
26 U.S.C. 7607(2) — 13
28 U.S.C. 1341 — 18
28 U.S.C. 1342 — 18
28 U.S.C. 2201 — 2, 7, 16
28 U.S.C. 2255 — 25
28 U.S.C. 2283 — 2, 24
28 U.S.C. 2284 — 18
38 Ill. Stat. 192.28–38 — 11

Miscellaneous:

Appleman, *Jurisdictional Conflicts in Declaratory Judgment Actions*, 29 Kent. L. J. (1940) 48, 51–55 — 18
Borchard, *Declaratory Judgments* (2d ed. 1941) 312–314 — 16
Developments in the Law, Declaratory Judgments—1941–1949, 62 Harv. L. Rev. (1949) 787, 788 — 17
F. R. Civ. P., Rule 57 — 17
F. R. Crim. P., Rule 41(e) — 9

Miscellaneous—Continued

	Page
H. Rept. 1264, 73d Cong., 2d Sess.	16
4 Pomeroy, *Equity Jurisprudence* (5th ed.), § 1361b, p. 978	19
S. Rept. 785, 71st Cong., 2d Sess.	11
Taylor & Willis, *The Power of Federal Courts to Enjoin Proceedings in State Courts*, 42 Yale L. J. (1933)	17, 18

In the Supreme Court of the United States

OCTOBER TERM, 1960

No. 182

BERNARD WILSON, PETITIONER

v.

DONALD F. SCHNETTLER; ARTHUR E. DOLL AND ROBERT E. WALTZ

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE RESPONDENTS

OPINION BELOW

The opinion of the court of appeals (R. 12–18) is reported at 275 F. 2d 932.

JURISDICTION

The judgment of the court of appeals was entered on March 21, 1960. The petition for a writ of certiorari was filed on April 9, 1960, and granted on June 27, 1960, 363 U.S. 840. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether, after an accused person has unsuccessfully moved in a state court for the suppression

evidence of narcotics seized by federal agents, he is entitled to readjudication of the matter in an action for declaratory judgment and injunctive relief brought by him in the federal court.

STATUTES INVOLVED

21 U.S.C. 198(a):

> The Secretary of the Treasury shall cooperate with the several states in the suppression of the abuse of narcotic drugs in their respective jurisdictions, and to that end he is authorized * * * (2) to arrange for the exchange of information concerning the use and abuse of narcotic drugs in said States and for cooperation in the institution and prosecution of cases in the courts of the United States and before the licensing boards and courts of the several states. * * *

28 U.S.C. 2201:

> In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

28 U.S.C. 2283:

> A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its ju-

risdiction, or to protect or effectuate its judgments.

STATEMENT

The petitioner brought an action for declaratory judgment and injunctive relief in the United States District Court for the Northern District of Illinois, Eastern Division. In his amended petition he alleged that, after federal narcotics agents (the respondents) arrested him without a warrant, they searched him and found narcotics on his person, which were seized. He was not taken before a United States Commissioner, but was placed in the Cook County jail on a state charge of unlawful possession of narcotic drugs. Thereafter he was indicted by the Cook County Grand Jury, was arraigned in the state court, and pleaded not guilty (R. 7–8). The petitioner thereupon moved in the state court to suppress the use of the narcotics as evidence, and, on hearing, the following was developed, according to the allegations of the petitioner in the present suit (R. 8):

> (a) The respondents testified that they had a certain building under surveillance where they had information that narcotic drugs were being sold.
>
> (b) That the respondents saw your petitioner approach the said building and enter the same; that a short time later they observed your petitioner leave the building whereupon they arrested him.
>
> (c) That they could not state under oath whether he had the narcotic drugs in his possession before he entered the building under surveillance or not; that when they arrested him, they did not have a warrant for his arrest.

The petitioner did not claim that the foregoing was all the evidence developed at such hearing, or specifically allege that there was lack of probable cause to arrest. The motion to suppress was denied by the state court on the authority of *Draper* v. *United States*, 358 U.S. 307. The petitioner alleged in the present action that, in denying the motion, the state court applied the law of the forum and did not apply the Federal Rules of Criminal Procedure; that the state case was still pending; and that the petitioner believed that the respondents would be called to testify (R. 8–9). He prayed that the district court hold a hearing and determine by declaratory judgment whether the respondents acted pursuant to the Federal Rules of Criminal Procedure and, if it should find that the search and seizure were unlawful, that the court impound the narcotics and enjoin the respondents from testifying in the state case (R. 9).

The respondents moved to dismiss on the grounds that the petition failed to state a claim upon which relief could be granted because the court lacked jurisdiction over the subject matter of the action and because the Attorney General of the United States had not been served (R. 10). The district court sustained the motion to dismiss (R. 11). The court of appeals affirmed (R. 12–18).

SUMMARY OF ARGUMENT

The petitioner mistakenly interprets the facts in this case as being similar to those in *Rea* v. *United States*, 350 U.S. 214. There, federal officers instituted an action in the state court based on evidence

which had been suppressed by the federal court, whereupon their further participation in the state action was enjoined by the federal court. Here, the situation is reversed, with the petitioner seeking to avoid the result of an adverse ruling by the state court on his motion to suppress evidence by asking an adjudication by the federal district court on the same issue. Moreover, he does not have the justification, claimed in *Rea*, that there were separate state and federal actions and that the state action was designed to evade the results of the completed federal case. Here, there is only a state case, and it is still pending.

Also, this case does not present the question posed by the dissent in *Rea*, whether the Court's ruling would be different in the absence of a federal search warrant. Although the Court's opinion was based in part on the invalidity of the warrant, we may assume *arguendo* that a federal court which has suppressed evidence seized by federal officers without a warrant does have authority to enjoin their proceeding on the same evidence in a state court. But here no federal action had been instituted and the petitioner had not even attempted to obtain a ruling by a federal court until after he had raised the same question in, and received an adverse ruling by, the state court. Nor is the government here claiming a right on the part of its officers to make illegal searches, where the prosecution is by the state. Our contention is that a defendant in a state criminal action, who has sought and obtained therein a ruling as to the legality of

568672—60——2

the conduct of federal agents, may not demand a re-adjudication of that ruling for the state proceeding by a federal district court.

I

A. There was here no attempt on the part of the federal officers to avoid the supervision of the federal courts. Federal cooperation in the institution of the state action was taken pursuant to statute, which both authorizes and directs such cooperation. The legislative history of this statute shows a plain intent to require such cooperation with state authorities. The petitioner was charged under state rather than federal statute because he was a minor offender. His rights in the state courts were no less than in the federal system. The Illinois constitutional provision and its interpretation by the state courts are virtually identical with the Fourth Amendment and its interpretation by the federal courts.

B. Furthermore, the petition for declaratory judgment has not alleged facts supporting a charge of misconduct in the search by the federal officers. It is alleged that the agents could not state under oath whether the petitioner had narcotic drugs when he entered the building in question and that they had no warrant, but the question of what information they had is carefully skirted. It is not even alleged, by way of conclusion, that the officers lacked probable cause to arrest. In view of the position of the Illinois courts and the state court ruling herein, it appears that the failure to make the one allegation necessary

to establish the illegality of the officers' conduct under federal law was not inadvertent.

II

Aside from the foregoing considerations showing that the petitioner has asserted no illegal conduct by the federal officials, it was proper for the district court to refuse to retry the issues ruled upon by the state court. Some courts have reached this conclusion on the ground of lack of jurisdiction. Others have placed it on the ground that such a ruling is a proper exercise of discretion. Although the broader ground seems well based in reason and authority, we stress the narrower ground—discretion—in view of the favorable ruling of the district court.

The discretionary nature of declaratory relief appears from the permissive language of 28 U.S.C. 2201, from the legislative history of the provision, and from the interpretation uniformly given this form of relief. Although similar considerations govern the grant or denial of injunctive and declaratory relief, the precedents bearing on each have grown up separately and we treat them separately to show that discretion was properly exercised.

A. From our earliest history, the use of injunctions by the federal courts to restrain actions in the state courts has been strictly limited. Also, the courts have rarely, and only in exceptional circumstances, used injunctions to restrain criminal proceedings, directly or indirectly. Moreover, the petitioner has alleged no ground upon which to invoke the assistance of a court of equity. No irreparable injury, clear and imminent,

has been alleged or claimed. The district court properly exercised its discretion in refusing injunctive relief.

B. Similarly, it was a proper exercise of discretion by the district court to refuse review of the interlocutory state order by declaratory judgment. The function of this form of relief is to promote judicial economy by the expeditious settlement of disputes, not to create a new device for prolonging litigation. Frequently declaratory relief will be denied if there is another pending action in which the rights of the parties can equally well be determined. *A fortiori*, such relief will not be granted if the rights of the parties have already been adjudicated by a court of competent jurisdiction. An additional reason for withholding relief exists where the original order is by a state court, because of the desire not to disturb the relationship between the federal and state sovereignties.

ARGUMENT

The petitioner's argument is based upon the erroneous assumption of a similarity between the facts of this case and those in *Rea* v. *United States*, 350 U.S. 214. In *Rea*, federal officers, after an adverse ruling on suppression of evidence in the federal court, themselves instituted a state court action based on the same evidence. It was this resort to a state proceeding after the federal ruling which the federal court enjoined. Here, the situation is reversed. The petitioner is seeking to avoid the effect of an adverse ruling, this time by a state court, by resort to the federal

court. Moreover, he does not have the justification, claimed in *Rea*, that the action in which the first ruling had been made had been concluded. The state proceeding is still pending. This is in substance an attempt to obtain an immediate review by a federal district court of an interlocutory ruling by a state court. For reasons we elaborate, the federal courts do not grant either injunctive or declaratory relief in such situations.

The government is not here claiming a right on the part of its officers to make illegal searches. Nor does this case present the question, to which the petitioner addresses most of his argument, as to whether a federal court would, on a finding of an illegal search pursuant to an arrest without a warrant, have authority to prevent its officers from turning over the evidence to a state and testifying in state court. Although the *Rea* case based its ruling in part on the fact that a federal warrant was involved, we may assume *arguendo*, for the purposes of this case, that under the basic rationale of *Rea* a federal court which had granted a motion to suppress evidence (under Rule 41(e) of the Federal Rules of Criminal Procedure) seized in the course of a search made at the time of an arrest without a warrant can enjoin the use of such evidence in a state proceeding. But that question is not presented here. The petitioner did not, as he could have done, move in the federal courts under Rule 41(e). Instead, he first moved in the state court for suppression of the evidence and, only after he had been unsuccessful in that

court, did he seek (six months after his arrest) to have the federal court overrule the state court's decision upholding the validity of his arrest and of the search incident thereto. The government's position is that a defendant in a state criminal action, who has sought and obtained an interlocutory ruling in the state court as to the propriety of the conduct of federal agents, has no right to demand a readjudication of the issue by the federal district court.

I

THE PETITIONER HAS ALLEGED NO MISCONDUCT BY FEDERAL OFFICERS

A. THE ACTION OF THE FEDERAL OFFICERS IN TURNING THE EVIDENCE OVER TO THE STATE WAS PROPER AND WAS NOT FOR THE PURPOSE OF AVOIDING SUPERVISION BY THE FEDERAL COURTS

There was nothing evasionary in the action of the federal officers when they turned the petitioner over to state authorities for prosecution under the Illinois statute. Such cooperation is not only authorized, but is directed, by 21 U.S.C. 198(a):

> The Secretary of the Treasury *shall* cooperate with the several states in the suppression of the abuse of narcotic drugs in their respective jurisdictions, and to that end he is authorized * * * to arrange * * * for cooperation in the institution and prosecution of cases in the courts * * * of the several states. [Emphasis added.]

That such cooperation is not only authorized but directed is also supported by the legislative history of this section. It originated as an amendment to the bill which became the Act of June 14, 1930, 46 Stat.

585, which was apparently requested by the American Medical Association. In a letter by the secretary of that association, embodied in Senate Report 785, 71st Cong., 2d Sess., the criticism was made that the Act as drawn set up a narcotics dictatorship, which unduly concentrated authority in the federal Commissioner of Narcotics. The letter said, among other things:

> As against that amendment, it has been urged that it is unnecessary because Federal officers can cooperate now. While it is admitted that they probably can cooperate, it is confidently asserted that they will not do so. The desirability of such cooperation was brought to their attention in 1926, but cooperation is even yet refused. Moreover, the very fact that Federal narcotic officers seem to be opposed to the enactment of this amendment, is the best of evidence that they do not desire to cooperate and will not do so unless compelled by law.

It thus appears that this authority was not sought by federal authorities as a means of sidestepping federal requirements or to obtain an easier route to conviction of narcotics offenders in state courts. And in this case the reason that prosecution was undertaken as a state case here was that it involved a minor offense; major offenders are prosecuted in the federal court. Penalties under the Illinois statute are distinctly less severe than the federal law. 38 Ill. Stat. 192.28–38.

Manifestly, the illicit drug traffic is a problem which deeply concerns both state and federal governments. It is in the interest of the public that the officers of both cooperate to the fullest extent in

its suppression. If there was ever the slightest tendency (as suggested by the letter referred to above) on the part of federal officers to try to gain credit for themselves by turning over their evidence only to federal authorities, it was proper to discourage it by this provision.[1]

The petitioner seems to take the position that the agents here have flouted the federal rules and selected a forum which condones their action. The right to be protected against unreasonable searches and seizures is a right under the Fourth Amendment; the criminal rules as to suppression merely provide a remedy for such violation. Article II, section 6, of the Illinois Constitution guarantees the right, in substantially the same language as the Fourth Amendment. The interpretation of this constitutional provision and an exclusionary rule similar to that followed by the federal courts makes the Illinois law accord with

[1] *Ramirez* v. *Lozoya*, 253 F. 2d 85 (C.A. 9), the only case other than *Rea* relied upon by the petitioner, held that *Rea* was not applicable on the facts there presented. It was claimed that officers had beaten the defendant after his arrest, but no confession or admission was thereby obtained. The defendant was tried before the federal court without a jury and acquitted. Thereafter, one of the agents signed a complaint in the state court, based upon the same transaction. The federal court which had originally tried the defendant enjoined the federal agents from testifying in the state court. The court of appeals reversed, holding that, if there was any misconduct on the part of the federal officers, no evidence was obtained thereby. The court said at page 89: "We think it not the law that any narcotics seized by federal agents cannot go over to the state court for use as evidence. The statute (21 U.S.C.A. § 198) adjures the Secretary of Treasury to cooperate with the several states."

the principles established by this Court for the federal system. See, for example, *People* v. *La Bostrie*, 14 Ill. 2d 617, 620–623, 153 N.E. 2d 570; *People* v. *Tillman*, 1 Ill. 2d 525, 529–530, 116 N.E. 2d 344; *Elkins* v. *United States*, 364 U.S. 206, 224. The only "forum shopping" which has taken place in this case has been that of the petitioner, who initiated a hearing in the state court and, when the ruling was against him, attempted to try again in the federal court.

B. THE COMPLAINT FAILED TO SET FORTH FACTS WHICH WOULD JUSTIFY SUPPRESSION OF THE EVIDENCE UNDER FEDERAL LAW

The petition filed in the federal district court does not state a claim upon which relief can be granted. On its face it shows that it is seeking retrial of an interlocutory order of a state court denying a motion to suppress, and, as we discuss *infra*, that in itself is sufficient to justify denial of the relief sought. At this point we stress its deficiency even in setting forth grounds for suppression under federal law. The complaint states in paragraph 2 that the petitioner was arrested without a warrant and narcotics seized from his person. But that is insufficient to show illegal action since federal narcotics officers have authority to arrest on probable cause without a warrant. 26 U.S.C. 7607(2). The petitioner nowhere states that the agents did not have probable cause to arrest him, and there is no reason, on the basis of what he does allege, to assume that the agents did not have probable cause. Indeed, the petitioner's allegations seem to have been carefully drawn to avoid meeting the

question of probable cause. He states that the agents "could not state under oath whether he had narcotic drugs in his possession before he entered the building under surveillance" and that the agents had no warrant. He does not state that the agents testified they had no other information. Inasmuch as the reported Illinois decisions show that Illinois courts do not condone arrests without probable cause,[2] it is reasonable to assume that this failure to allege lack of probable cause was not inadvertent.[3] Since, therefore, the petitioner failed to make the one allegation absolutely necessary to a claim of illegal action by federal officers, he failed to state a sufficient basis to invoke action by a federal court, irrespective of the aspect of the case involving review of the interlocutory orders of a state court.

II

THE COURT PROPERLY EXERCISED ITS DISCRETION IN DENYING RELIEF

Aside from the considerations discussed above in Point I, the fact that it appeared on the face of the complaint that the petitioner was asking a federal court to retry an issue determined by an interlocutory action of a state court alone justified the district court in denying relief.

The problem of separate court systems in a federal government—as it is relevant to this case—was ex-

---

[2] *People* v. *La Bostrie*, 14 Ill. 2d 617, 620–623, 153 N.E. 2d 570; *People* v. *Tillman*, 1 Ill. 2d 525, 529–530, 116 N.E. 2d 344; see *Elkins* v. *United States*, 364 U.S. 206, 224).

[3] Since the Illinois court based its ruling on *Draper* v. *United States*, 358 U.S. 307, there obviously was testimony as to probable cause at the hearing.

plicated by Chief Justice Taft in *Ponzi* v. *Fessenden*, 258 U.S. 254, 259:

> We live in the jurisdiction of two sovereignties, each having its own system of courts to declare and enforce its law in common territory. It would be impossible for such courts to fulfill their respective functions without embarrassing conflict unless rules were adopted by them to avoid it. The people for whose benefit these two systems are maintained are deeply interested that each system shall be effective and unhindered in its vindication of its laws. The situation requires, therefore, not only definite rules fixing the powers of the courts in cases of jurisdiction over the same persons and things in actual litigation, but also a spirit of reciprocal comity and mutual assistance to promote due and orderly procedure.
>
> One accused of crime has a right to a full and fair trial according to the law of the government whose sovereignty he is alleged to have offended, but he has no more than that. He should not be permitted to use the machinery of one sovereignty to obstruct his trial in the courts of the other, unless the necessary operation of such machinery prevents his having a fair trial.

Some courts have held that there is no power to review by declaratory judgment or injunction the ruling of a court of coordinate jurisdiction. Others have held that refusal to make such review is a proper exercise of discretion. None, so far as we have been able to determine, permits such review. Since the one area trenches upon the other, we stress the narrower point that discretion was here properly exer-

cised. The general nature of this discretion is briefly reviewed before considering the propriety of the district court's denial of both declaratory and injunctive relief.

The language of the Declaratory Judgment Act, 28 U.S.C. 2201, *supra*, p. 2, indicates that relief under it is intended to be discretionary.[4] The Act is permissive, rather than mandatory in form, providing that the court "may declare the rights and other legal relations of any interested party seeking such declaration". H. Rept. 1264 of the 73d Congress, Second Session, page 2, states that "large discretion is conferred upon the courts as to whether or not they will administer justice by this procedure". See Borchard, *Declaratory Judgments* (2d ed. 1941), 312–314.

Likewise, the granting of equitable relief lies within the sound discretion of the court. The language of Mr. Justice Stone in *Di Giovanni* v. *Camden Fire Insurance Assn.*, 296 U.S. 64, 73, is applicable:

> While the consequences of the court's grant of equitable relief cannot affect its power, they nevertheless have an important bearing on the exercise of the judicial discretion which must guide a court of equity in determining whether it should grant or withhold a remedy which it has within its power to give.

---

[4] *Federation of Labor* v. *McAdory*, 325 U.S. 450, 471; *Eccles* v. *Peoples Bank*, 333 U.S. 426, 431; *Kerotest Mfg. Co.* v. *C-O-Two Fire Equip. Co.*, 342 U.S. 180, 183–184; *Public Serv. Comm'n* v. *Wycoff Co.*, 344 U.S. 237, 241, 243.

Distinctions can be made as to the breadth of the discretion which may be exercised in declaratory actions and injunctions.[5] However, in general, the same considerations apply. Declaratory actions, while *sui juris*, bear a close kinship to equitable actions[6] and are frequently treated as substantially identical with them. *Eccles* v. *Peoples Bank*, 333 U.S. 426; *Kerotest Manufacturing Co.* v. *C-O-Two Co.*, 342 U.S. 180; *Great Lakes Dredge & Dock Co.* v. *Huffman*, 319 U.S. 293, 299. However, in spite of the similarity in the considerations which govern the granting or withholding of the two kinds of relief, we treat them separately, for the reason that the precedents governing them have, to a large extent, grown up separately.

A. INJUNCTIVE RELIEF WAS PROPERLY DENIED

When Congress, in 1793, first expressly granted federal courts the right to issue injunctions, a limitation was placed thereon that the writ should not be used to stay proceedings in any state court.[7] Although the limitation has not always been literally

---

[5] It is not necessary to prove the absence of other legal remedy in order to be entitled to declaratory relief. Rule 57, F.R. Civ. P.; *Aetna Life Insurance Co.* v. *Haworth*, 300 U.S. 227; *Nashville, C. & St. L. Ry. Co.* v. *Wallace*, 288 U.S. 249.

[6] *Developments in the Law, Declaratory Judgments—1941–1949*, 62 Harv. L. Rev. (1949) 787, 788.

[7] 1 Stat. 335, now 28 U.S.C. 2283. The purpose of the limitation was largely to alleviate the burden of the circuit duties of the members of the Supreme Court. *Toucey* v. *New York Life Insurance Co.*, 314 U.S. 118, 130; Taylor & Willis, *The Power of Federal Courts to Enjoin Proceedings in State Courts*, 42 Yale L. J. (1933) 1169, 1170.

applied,[8] this statute and others limiting federal injunctive power over state proceedings[9] express a long continued legislative policy against federal interference with state proceedings, by the use of injunctions. *Toucey* v. *New York Life Insurance Co.*, 314 U.S. 118; *Stefanelli* v. *Minard*, 342 U.S. 117.

Many times the federal courts have refused to interfere with the course of civil litigation in the state courts. The Court said in *Peck* v. *Jenness*, 7 How. 612, 624–625:

> It is a doctrine of law too long established to require a citation of authorities that, where a court has jurisdiction, it has a right to decide every question which occurs in the cause, and whether its decision be correct or otherwise, its judgment, till reversed, is regarded as binding in every other court; and that, where the jurisdiction of a court, and the right of a plaintiff to prosecute his suit in it, have once attached, that right cannot be arrested or taken away by proceedings in another court. These rules have their foundation, not merely in comity, but on necessity. For if one may enjoin, the other may retort by injunction, and thus the parties be without remedy; being liable to a process for contempt in one, if they dare to proceed in the other.

See, also, *Taylor* v. *Taintor*, 16 Wall. 366, 370; *Clarke* v. *Rist*, Fed. Cas. No. 2,861 (C.C. D. Ohio); *Earl* v.

---

[8] Appleman, *Jurisdictional Conflicts in Declaratory Judgment Actions*, 29 Kent. L. J. (1940) 48, 51–55; Taylor & Willis, *supra*, n. 7, 42 Yale L. J. at 1194–1197.

[9] 28 U.S.C. 1341, 1342, 2284.

Raymond, Fed. Cas. No. 4,243; *Randall* v. *Howard,* 2 Black 585; *Williams* v. *Benedict,* 8 How. 107; *Peale* v. *Phipps,* 14 How. 367, 374; *Orton* v. *Smith,* 18 How. 263, 266. And in *Harkrader* v. *Wadley,* 172 U.S. 148, 164, the Court pointed out that the principle was equally applicable to both civil and criminal actions:

> When a state court and a court of the United States may each take jurisdiction of a matter, the tribunal whose jurisdiction first attaches holds it, to the exclusion of the other, until its duty is fully performed and the jurisdiction involved is exhausted; and this rule applies alike in both civil and criminal cases.

The unwillingness of the courts to interfere by injunction with criminal prosecutions, which had its origin in British precedent,[10] has likewise been many times expressed. *Beal* v. *Missouri Pacific R. Corp.,* 312 U.S. 45, 49; *Watson* v. *Buck,* 313 U.S. 387; *Spielman Motor Sales, Inc.* v. *Dodge,* 295 U.S. 89; *Cline* v. *Frink Dairy Co.,* 274 U.S. 445; *Fenner* v. *Boykin,* 271 U.S. 240; *Ackerman* v. *International Longshoremen's & Warehousemen's Union,* 187 F. 2d 860 (C.A. 9); 4 Pomeroy, *Equity Jurisprudence* (5th ed.), 1361b, p. 978.

The petitioner has stated no ground for invoking equitable jurisdiction. It is not pointed out in what respect his legal remedy is inadequate. On the contrary, we have noted, *supra,* pp. 12–13, 14, that Illinois follows an exclusionary rule patterned on federal law, interpreting a constitutional provision which varies

[10] *Mayor & Corporation of York* v. *Pilkington,* 2 Atk. 302, 9 Mod. 273.

only minutely from the wording of the Fourth Amendment. In *Douglas* v. *City of Jeannette,* 319 U.S. 157, 162–164, the Court held that city authorities would not be enjoined from enforcing an invalid ordinance limiting the dissemination of religious literature. The reason for refusing such relief was stated by Chief Justice Stone, at page 163:

> Congress, by its legislation, has adopted the policy, with certain well defined statutory exceptions, of leaving generally to the state courts the trial of criminal cases arising under state laws, subject to review by this Court of any federal questions involved. Hence, courts of equity in the exercise of their discretionary powers should conform to this policy by refusing to interfere with or embarrass threatened proceedings in state courts save in those exceptional cases which call for the interposition of a court of equity to prevent irreparable injury which is clear and imminent; * * *.

In *Stefanelli* v. *Minard,* 342 U.S. 117, the Civil Rights Act, 42 U.S.C. 1983, was alleged as the basis for an injunction in the United States district court to prevent the fruit of an allegedly unlawful search by state officers from being used as evidence in the state criminal trial. While the basis of invoking federal jurisdiction was different from that in the instant case, the reasoning of the Court is equally applicable where the basis for federal jurisdiction is claimed to be the misconduct of federal officers. The Court said, at page 120:

> The maxim that equity will not enjoin a criminal prosecution summarizes centuries of

> weighty experience in Anglo-American law. It is impressively reinforced when not merely the relations between coordinate courts but between coordinate political authorities are in issue. The special delicacy of the adjustment to be preserved between federal equitable power and State administration of its own law, has been an historic concern of congressional enactment, see, *e.g.*, 28 U.S.C. §§ 1341, 1342, 2283, 2284(5). This concern has been reflected in decisions of this Court, not governed by explicit congressional requirement, bearing on a State's enforcement of its criminal law.

The results of such resort to the federal courts, aptly illustrated by the present case, were considered at pages 123–124:

> The consequences of exercising the equitable power here invoked are not the concern of a merely doctrinaire alertness to protect the proper sphere of the States in enforcing their criminal law. If we were to sanction this intervention, we would expose every State criminal prosecution to insupportable disruption. Every question of procedural due process of law—with its far-flung and undefined range—would invite a flanking movement against the system of State courts by resort to the federal forum, with review if need be to this Court, to determine the issue. Asserted unconstitutionality in the impaneling and selection of the grand and petit juries, in the failure to appoint counsel, in the admission of a confession, in the creation of an unfair trial atmosphere, in the misconduct of the trial court—all would provide ready opportunities, which conscientious counsel might be

bound to employ, to subvert the orderly, effective prosecution of local crime in local courts. To suggest these difficulties is to recognize their solution.

Of course, it would be possible in the future to avoid such complications by bringing all narcotics charges in the federal court when there has been a search in which federal officers participated. However, this would add to the load of the federal courts and would be an unnecessary hardship on minor offenders, who would thereby incur the more severe penalties of the federal law. The benefit of such concentration in the federal courts to defendants, even to this petitioner, might well be illusory.[11]

B. THE COURT ALSO PROPERLY EXERCISED ITS DISCRETION IN DENYING DECLARATORY RELIEF

Insofar as we have been able to determine, declaratory relief has never been granted to review a prior ruling by a court of competent jurisdiction. On appeal, such denial of relief has been approved either on the ground that there was no jurisdiction to pass on the matter already ruled upon, or on the ground that refusal to review the ruling was a proper exercise of discretion.

---

[11] It is possible that in the event the Supreme Court of Illinois should uphold the state ruling refusing to suppress the evidence the petitioner would not, under *Wolf* v. *Colorado*, 338 U.S. 25, have an opportunity to review the ruling in this Court since the admission of the evidence would not violate the Fourteenth Amendment. Nevertheless, this does not mean that at this stage the federal courts should interfere with the orderly proceedings of the state courts which under state law may be expected to exclude the evidence if it was in fact illegally seized.

This Court has never had occasion to pass on this exact question directly, although it has passed on it inferentially by going a step further in denying declaratory relief where an action has been pending in the state court which could as well or better determine the issue. *Brillhart* v. *Excess Insurance Co.*, 316 U.S. 491, 494; *Federation of Labor* v. *McAdory*, 325 U.S. 450; *Public Service Comm'n* v. *Wycoff Co.*, 344 U.S. 237. See also *Aetna Life Insurance Co.* v. *Haworth*, 300 U.S. 227, 239, where the Court noted, in granting declaratory relief, that no action had been instituted in the state court to determine the issue presented. The clear implication of all these cases is that where the matter had been presented and passed upon by a state court, it would not be proper for a federal court to pass on the same question.

This has been many times expressly held by the lower courts. A concise expression of the reasons for such holding is given in *McLain* v. *Lance*, 146 F. 2d 341, 345–346 (C.A. 5), certiorari denied, 325 U.S. 855.

> Where a State Court, having jurisdiction in a suit between the same parties over the same subject matter, has defined and declared the rights of the parties, the federal District Court, acting as a court of admiralty or otherwise, is without power to redeclare, review, or set aside such judgment or decree of the state court, whether it be interlocutory or final, because it is not a court of review for either state or federal cases.

And at page 346:

> The object of the statute is to afford a new form of relief where needed, not to furnish a new

> choice of tribunals or to draw into the federal courts the adjudication of causes properly cognizable by courts of the state. * * * No litigant is entitled to two declarations of the same right.

Similar expressions of the law have been given in other circuits. In *National Cancer Hospital of America* v. *Webster,* 251 F. 2d 466, 468 (C.A. 2), Judge Learned Hand described the petition for declaratory judgment as being "no more than an effort to use the District Court to review decisions already made by the state court, or to substitute that court for the state court in the decision of such issues as it had not decided." In *American Automobile Insurance Co.* v. *Freundt,* 103 F. 2d 613, 617 (C.A. 7), the court said, in denying declaratory relief:

> It was not intended by the act to enable a party to obtain a change of tribunal and thus accomplish in a particular case what could not be accomplished under the removal act * * *.

The same point was stressed in *Maryland Casualty Co.* v. *Boyle Construction Co.,* 123 F. 2d 558, 562 (C.A. 4). See also *Maryland Casualty Co.* v. *Pacific Coal & Oil Co.,* 312 U.S. 270; *American Fidelity & Casualty Co.* v. *Service Oil Co.,* 164 F. 2d 478, 480 (C.A. 4); *Franklin Life Insurance Co.* v. *Johnson,* 157 F. 2d 653 (C.A. 10).

In *H. J. Heinz Co.* v. *Owens,* 189 F. 2d 505, 509 (C.A. 9), Judge Hastie saw a parallel in the statutory denial of power to interfere with a state proceeding by injunction (28 U.S.C. 2283), expressing the view that such a legislative declaration of policy would bind the courts as to the less drastic declaratory relief, so

that a grant of a declaratory judgment would be an abuse of discretion. As in the denial of injunctive relief (*Stefanelli* v. *Minard*, 342 U.S. 117, 123), the use of the declaratory judgment procedure for the piecemeal trial of issues in a lawsuit has been disapproved. *Doby* v. *Brown*, 232 F. 2d 504 (C.A. 4), certiorari denied, 352 U.S. 837; *Western Contracting Corp* v. *National Surety Corp.*, 163 F. 2d 456 (C.A. 4).

The federal courts refuse to interfere by declaratory judgment with actions pending in other federal courts where the issues can as well be determined there. *Western Supplies* v. *Freeman*, 109 F. 2d 693, 695 (C.A. 6); *Carbide & Carbon Chemical Corp.* v. *United States Industrial Chemicals*, 140 F. 2d 47 (C.A. 4). A collateral attack upon a criminal conviction by declaratory judgment, rather than by motion to vacate sentence under 28 U.S.C. 2255, was made in *Clark* v. *Memolo*, 174 F. 2d 978, 981 (C.A. D.C.). In denying relief, the court said that the purpose of the Declaratory Judgment Act did not include the determination of rights already duly adjudicated. Similar relief was denied in *Hurley* v. *Lindsay*, 207 F. 2d 410 (C.A. 4) and *Tuckson* v. *Clemmer*, 231 F. 2d 658 (C.A. D.C.).

The Declaratory Judgment Act, of course, does not enlarge the jurisdiction of the federal courts, but is procedural only. *Aetna Life Insurance Co.* v. *Haworth*, 300 U.S. 227; *Skelly Oil Co.* v. *Phillips Co.*, 339 U.S. 667, 671–672; *Aetna Casualty & Surety Co.* v. *Quarles*, 92 F. 2d 321 (C.A. 4). By its own terms, its application is limited to cases "of actual controv-

ersy within its jurisdiction." Here the petitioner is seeking in the federal courts review of an interlocutory decision of a state court. There is no reason for the federal courts to act in that situation.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment below should be affirmed.

J. LEE RANKIN,
Solicitor General.
MALCOLM RICHARD WILKEY,
Assistant Attorney General.
BEATRICE ROSENBERG,
KIRBY W. PATTERSON,
Attorneys.

OCTOBER 1960.

U.S. GOVERNMENT PRINTING OFFICE: 1960

SUPREME COURT OF THE UNITED STATES

No. 182.—October Term, 1960.

Bernard Wilson, Petitioner, v. Donald F. Schnettler, Arthur E. Doll, and Robert E. Waltz.	On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[February 27, 1961.]

Mr. Justice Whittaker delivered the opinion of the Court.

Respondents, who are federal narcotics agents, arrested petitioner without a warrant in Cook County, Illinois, and, in the course of an incidental search, found narcotic drugs on his person which they seized. Respondents then delivered petitioner to the Cook County authorities who confined him in the county jail. In due course, the county grand jury returned an indictment charging petitioner with possessing the narcotics in violation of an Illinois statute. Soon after his arraignment and plea of "not guilty," petitioner moved the court for an order suppressing the use of the narcotics as evidence in his impending criminal trial. After full hearing, including the taking of evidence (not contained in this record), the court denied the motion.

Before the case was reached for trial, petitioner brought the present action against respondents in the Federal District Court in Chicago to impound the narcotics (though he did not allege that respondents have possession of them) and to enjoin their use, and the respondents from testifying, at the trial of the criminal case in the state court. The very meager complaint alleged, in addition to the facts we have stated, only a few of the facts relating

to petitioner's arrest,[1] and that he believes "respondents will be called to testify in [the state criminal] case that the petitioner unlawfully had in his possession the narcotic drugs seized by the respondents. . . ." It concluded with a prayer for the relief stated.

Respondents moved to dismiss the complaint for failure to state a claim upon which relief could be granted. After a hearing, the District Court granted the motion and dismissed the action. On appeal, the Seventh Circuit affirmed. 275 F. 2d 932. To consider petitioner's claim that the judgment is repugnant to controlling rules and decisions of this Court, we granted certiorari. 363 U. S. 840.

We have concluded that the action was properly dismissed, and that the judgment must be affirmed.

Although the complaint alleged that the arrest was made without a warrant, there was no allegation that it was made without probable cause. In the absence of such an allegation the courts below could not, nor can we, assume that respondents arrested petitioner without probable cause to believe that he had committed or was committing a narcotics offense. And if they had such probable cause, the arrest, though without a warrant, was lawful and the subsequent search of petitioner's person

---

[1] In this respect, the complaint alleged only that at the hearing on the motion to suppress "the following facts and circumstances were developed:

"(a) The respondents testified that they had a certain building under surveillance where they had information that narcotic drugs were being sold.

"(b) That the respondents saw your petitioner approach the said building and enter the same; that a short time later they observed your petitioner leave the building whereupon they arrested him.

"(c) That they could not state under oath whether he had the narcotic drugs in his possession before he entered the building under surveillance or not; that when they arrested him, they did not have a warrant for his arrest."

and the seizure of the found narcotics were validly made incidentally to a lawful arrest." *Weeks* v. *United States*, 232 U. S. 383, 392; *Carroll* v. *United States*, 267 U. S. 132, 158; *Agnello* v. *United States*, 269 U. S. 20, 30; *Giordenello* v. *United States*, 357 U. S. 480, 483; *Draper* v. *United States*, 358 U. S. 307, 310–311.[2] For this reason alone the complaint failed to state a claim upon which relief could be granted.

Nor did the complaint allege, even in conclusionary terms, that petitioner does not have a plain and adequate remedy at law in the state court to redress any possible illegality in the arrest and incidental search and seizure. Indeed, the allegations of the complaint affirmatively show that petitioner does have such a remedy in the Illinois court and that he has actually prosecuted it there, but only to the point of an adverse interlocutory order. That court, whose jurisdiction first attached, retains jurisdiction over this matter to the exclusion of all other courts—certainly to the exclusion of the Federal District Court—until its duty has been fully performed, *Harkrader* v. *Wadley*, 172 U. S. 148, 164;[3] *Peck* v. *Jenness*, 7 How. 612, 624–625,[4] and

---

[2] Article II, § 6, of the Illinois Constitution protects against unreasonable searches and seizures in substantially the same language as the Fourth Amendment. That State's interpretation of its constitutional provision and its exclusionary rule, similar to the one followed in the federal courts, makes the Illinois law accord with the principles established by this Court for the federal system. See, *e. g.*, *People* v. *LaBostrie*, 14 Ill. 2d 617, 620–623, 153 N. E. 2d 570; *People* v. *Tillman*, 1 Ill. 2d 525, 529–530, 116 N. E. 2d 344.

[3] "When a state court and a court of the United States may each take jurisdiction of a matter, the tribunal where jurisdiction first attaches holds it, to the exclusion of the other, until its duty is fully performed and the jurisdiction involved is exhausted; and this rule applies alike in both civil and criminal cases." *Harkrader* v. *Wadley*, *supra*, at 164.

[4] "It is a doctrine too long established to require citation of authorities that . . . where the jurisdiction of a court, and the right of a plaintiff to prosecute his suit in it, have once attached, that right

it can determine this matter as well as, if not better than, the federal court. If, at the criminal trial, the Illinois court adheres to its interlocutory order on the suppression issue to petitioner's prejudice, he has an appeal to the Supreme Court of that State, and a right if need be to petition for "review by this Court of any federal questions involved." *Douglas* v. *City of Jeannette*, 319 U. S. 157, 163. It is therefore clear that petitioner has a plain and adequate remedy at law in the criminal case pending against him in the Illinois court.

There is still another cardinal reason why it was proper for the District Court to dismiss the complaint. We live in the jurisdiction of two sovereignties. Each has its own system of courts to interpret and enforce its laws, although in common territory. These courts could not perform their respective functions without embarrassing conflicts unless rules were adopted to avoid them. Such rules have been adopted. One of them is that an accused "should not be permitted to use the machinery of one sovereignty to obstruct his trial in the courts of the other, unless the necessary operation of such machinery prevents his having a fair trial." *Ponzi* v. *Fessenden*, 258 U. S. 254, 259. Another is that federal courts should not exercise their discretionary power "to interfere with or embarrass threatened proceedings in state courts save in those exceptional cases which call for the interposition of a court of equity to prevent irreparable injury which is both clear and imminent; . . . ." *Douglas* v. *City of Jeannette*, *supra*, at 163.

---

cannot be arrested or taken away by proceedings in another court. These rules have their foundation, not merely in comity, but on necessity. For if one may enjoin, the other may retort by injunction, and thus the parties be without remedy; being liable to a process for contempt in one, if they dare to proceed in the other." *Peck* v. *Jenness*, *supra*, at 624–625.

By this action, petitioner not only seeks to interfere with and embarrass the state court in his criminal case, but he also seeks completely to thwart its judgment by relitigating in a trial *de novo* in a federal court the very issue that he has already litigated in the state court. "If we were to sanction this intervention, we would expose every State criminal prosecution to insupportable disruption. Every question of procedural due process of law—with its far-flung and undefined range—would invite a flanking movement against the system of State courts by resort to the federal forum, with review if need be to this Court, to determine the issue. Asserted unconstitutionality, in the impaneling and selection of the grand and petit juries, in the failure to appoint counsel, in the admission of a confession, in the creation of an unfair trial atmosphere, in the misconduct of the trial court [and, we may add, in the ruling of motions to suppress evidence, and in ruling the competency of witnesses and their testimony]—all would provide ready opportunities, which conscientious counsel might be bound to employ, to subvert the orderly, effective prosecution of local crime in local courts. To suggest these difficulties is to recognize their solution." *Stefanelli* v. *Minard*, 342 U. S. 117, 123–124.

Notwithstanding all of this, petitioner contends that the averments of his complaint were sufficient to entitle him to the relief prayed under the principles announced in *Rea* v. *United States*, 350 U. S. 214. But it is plain that the averments of this complaint do not invoke or even approach the principles of the *Rea* case. That case did not hold, as petitioner's contention assumes, that narcotic drugs lawfully seized by federal officers are inadmissible, or that such officers may not testify about their seizure, in state prosecutions. Such a concept would run counter to the express command of Congress that federal officers

shall cooperate with the States in such investigations and prosecutions. See 21 U. S. C. § 198 (a). Indeed, the situation here is just the reverse of the situation in *Rea*. There, the accused had been indicted *in a federal court* for the unlawful acquisition of marihuana, and had moved in that court, under Rule 41 (e) of the Federal Rules of Criminal Procedure (18 U. S. C. Rule 41 (e)), for an order suppressing the use of the marihuana as evidence at the trial. After hearing, the District Court, finding that the accused's arrest and search had been made by federal officers under an illegal warrant issued by a United States Commissioner, granted the motion to suppress. The effect of that order, under the express provisions of that Rule, was that the suppressed property "shall not be admissible in evidence at any hearing or trial." Cf. *Reina* v. *United States*, 364 U. S. —; 81 S. Ct. 260, 262–263. Despite that order, one of the arresting federal officers thereafter caused the accused to be rearrested and charged, in a state court, with possession of the same marihuana in violation of the State's statute, and threatened to make the State's case by his testimony and the use of the marihuana that the federal court had earlier suppressed under Rule 41 (e). Thereupon, to prevent the thwarting of the federal suppression order, petitioner moved the federal court to enjoin that conduct. That court denied the motion and its judgment was affirmed on appeal. On certiorari, this Court, acting under its supervisory power over the federal rules, "which extends to policing [their] requirements and making certain that they are observed," 350 U. S., at 217, reversed the judgment, because "A federal agent [had] violated [and was about further to violate] the federal Rules governing searches and seizures—Rules prescribed by this Court and made effective after submission to the Congress. See 327 U. S. 821, *et seq.*" 350 U. S., at 217.

How different are the facts in the present case! Here there is no allegation or showing that any proceedings ever were taken against petitioner under any federal rule or in any federal court. There has been no finding that petitioner's arrest was unlawful or that the search of his person which yielded the narcotics was not incident to a lawful arrest and therefore proper. The state court's finding—the only court involved and the only finding on the matter—is the other way. Nor is there even any allegation in the complaint that the arrest was not made upon probable cause, although it is admitted that the search was made incident to the arrest.

It is clear that the complaint was properly dismissed.

Affirmed.

SUPREME COURT OF THE UNITED STATES

No. 182.—October Term, 1960.

Bernard Wilson, Petitioner, v. Donald F. Schnettler, Arthur E. Doll, and Robert E. Waltz.	On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[February 27, 1961.]

Mr. Justice Stewart, concurring.

I could not base affirmance of the judgment upon the ground that the petitioner's motion was technically deficient in failing to recite the talismanic phrase "without probable cause." Nor do I think the District Court lacked power to issue the requested injunction, either by reason of 28 U. S. C. § 2283 or the rule formulated in *Harkrader* v. *Wadley*, 172 U. S. 148, 164. It seems to me that *Rea* v. *United States*, 350 U. S. 214, established that District Courts do have such power.*

But I join in affirming the judgment. The petitioner has failed to state a case warranting equitable relief under the standards of *Stefanelli* v. *Minard*, 342 U. S. 117, 122, and *Douglas* v. *City of Jeannette*, 319 U. S. 157, 163. As the Court's opinion points out, the factors which justified the issuance of an injunction in *Rea* are not present here.

*The dissenters in *Rea* agreed that this power exists. See 350 U. S., at 219.

SUPREME COURT OF THE UNITED STATES

No. 182.—October Term, 1960.

Bernard Wilson, Petitioner, v. Donald F. Schnettler, Arthur E. Doll, and Robert E. Waltz.	On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[February 27, 1961.]

Mr. Justice Douglas, with whom The Chief Justice and Mr. Justice Brennan concur, dissenting.

The trial judge on respondent's motion [1] dismissed an "amended petition for declaratory judgment" that made the following allegations: Petitioner was arrested by two of the respondents, agents of the Federal Bureau of Narcotics, who acted without a warrant. He was searched by these agents at the time of his arrest and narcotics were seized from him. Though imprisoned, he was neither taken before a Federal Commissioner, nor charged with a crime against the United States. Instead, he was indicted for the possession of those same narcotics under the laws of Illino . He unsuccessfully attempted to exclude the use of these narcotics or the testimony of the arresting agents by a motion made in the state court where "the law of the forum was applied and the Federal Rules of Criminal Procedure were not applied." Petitioner based jurisdiction of the federal court on "the supervisory powers of Federal Courts over federal law enforcement agencies." Alleging that "the respondents will be called to testify in such case that the petitioner had in his possession the narcotic drugs seized by the respondents," he asked, first, a declaratory judgment as to whether the

[1] The motion to dismiss specified three grounds. Of them, only two are before this Court, *i. e.*, failure to state a cause of action and lack of jurisdiction over the subject matter.

federal agents had acted illegally in the arrest and incidental search of petitioner and, second, in the event that the search had been illegal, the impounding of the seized narcotics and an injunction against the respondent's testifying "in respect to the narcotic drugs so seized" in the state proceedings.

These allegations, liberally construed, entitle petitioner to a hearing, and, if they are supported by evidence, to the relief he seeks. In *Rea* v. *United States*, 350 U. S. 214, we held that an injunction would issue to prevent the use by federal agents in a state proceeding of the fruits of an illegal search. "The obligation of the federal agent is to obey the Rules [of Criminal Procedure]. They are drawn for innocent and guilty alike. They prescribe standards for law enforcement. They are designed to protect the privacy of the citizen, unless the strict standards set for searches and seizures are satisfied. That policy is defeated if the federal agent can flout them and use the fruits of his unlawful act either in federal or state proceedings." *Id.*, 217–218.

Under Rule 41 (e), Federal Rules of Criminal Procedure, the federal court is instructed to hear and determine a motion to suppress made by "a person aggrieved by an unlawful search and seizure [where] the property was illegally seized without a warrant."[2] Implicit in

[2] Rule 41 (e) reads: "A person aggrieved by an unlawful search and seizure may move the district court for the district in which the property was seized for the return of the property and to suppress for the use as evidence anything so obtained on the ground that (1) the property was illegally seized without warrant, or (2) the warrant is insufficient on its face, or (3) the property seized is not that described in the warrant, or (4) there was not probable cause for believing the existence of the grounds on which the warrant as issued, or (5) the warrant was illegally executed. The judge shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted the property shall be restored

that duty is the judicial enforcement of the provisions of the Fourth Amendment and Acts of Congress which limit the power of arrest and search. Judicial enforcement is no less to be invoked *after* the federal agents have acted than it is *before* they have acted, *i. e.*, when they apply to the courts for a warrant. That, as I understand, is the teaching of the *Rea* case.

It is said that petitioner has failed to allege that the arrest in question was made without probable cause, and thus illegal under federal law. See 26 U. S. C. § 7607 (2). It is said that he has failed to point out in what way his "legal remedy" (*i. e.*, the hearing on the motion to exclude in the state court) was inadequate. It is said that a federal court, in the exercise of discretion to grant or to deny declaratory relief, should refuse to act in these circumstances, especially since the grant of it would interfere with a state prosecution. I believe that none of these objections is well taken.

If it should appear at a hearing that the arrest and incidental search were legal under federal law, then petitioner would have no case. But surely his failure to make the magic allegation that the arrest was "without probable cause," should not cause him to be summarily cut off.[2] At most, the defect complained of would justify his being required to amend his pleading.

---

unless otherwise subject to lawful detention and it shall not be admissible in evidence at any hearing or trial. The motion to suppress evidence may also be made in the district where the trial is to be had. The motion shall be made before trial or hearing unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion, but the court in its discretion may entertain the motion at the trial or hearing."

[2] The Court of Appeals did not proceed on any such narrow grounds. It speaks of the "allegedly illegal arrest and search," and places its decision on the "[d]ecisive factual differences [which] distinguish the *Rea* case from the instant proceeding." 275 F. 2d 932, 933.

Petitioner's failure to allege the inadequacy of his "legal remedy" may be as easily disposed of. He is invoking, in this proceeding, the "supervisory powers" of the federal courts over the administration of federal law enforcement. That power is lodged in the federal courts. Congress could have entrusted the enforcement of all federal laws to state tribunals, as has India. But the First Congress made the decision to create a federal judicial system, complete unto itself. Some federal laws are enforceable in state tribunals. See, *e. g.*, *Testa* v. *Katt*, 330 U. S. 386. But the Federal Rules of Criminal Procedure are not among them. Since the federal agents have chosen to avoid the federal courts, the issue as to compliance with the Federal Rules cannot be litigated in any way other than by this proceeding. In the state trial the issue will not be whether the federal agents have acted within the limits of their federal authority, but whether, under the state constitution, the search was a reasonable one.[4] Under the Supremacy Clause state law must give way, where, for example, a state procedure violates the Federal Constitution. Yet under the decision of this Court in *Wolf* v. *Colorado*, 338 U. S. 25, not even the duty of excluding evidence, because it was seized in violation of the command of the Fourth Amendment, is imposed on state courts as a requirement of federal law. The proper forum—indeed the only one available for litigation of compliance with that requirement—is the federal court.

---

[4] Since petitioner has alleged that the Illinois court did not apply the standards imposed by the federal courts, we may leave aside questions which might be raised by the state court incorporation of a federal standard to guide their determinations under state law. Cf. *Standard Oil Co. of Calif.* v. *Johnson*, 316 U. S. 481; *People* v. *Grod*, 385 Ill. 584, 586, 53 N. E. 2d 591, 593 (the state and federal constitutional provisions are said to be "in effect the same").

We should also overrule the objection[5] based on the policy of 28 U. S. C. § 2283 which restrains a federal court from intermeddling with state proceedings, especially state criminal proceedings. Section 2283[6] prohibits, in certain circumstances, the grant by a federal court of "an injunction to stay proceedings in a State court." What we said about the relief sought in *Rea* v. *United States*, *supra*, is applicable here:

> "The District Court is not asked to enjoin state officials nor in any way to interfere with state agencies in enforcement of state law . . . . No injunction is sought against a state official. The only remedy asked is against a federal agent who, we are told, plans to use his illegal search and seizure as the basis of testimony in the state court." *Id.*, 216–217.

In this case, as in *Rea*, the interference, if any, is an indirect one and only incidental to placing federal officers under federal standards of behavior. If the considerations, which led to decisions like *Stefanelli* v. *Minard*, 342 U. S. 117, were not controlling in *Rea* v. *United States*, *supra*, they should not be controlling in this case.

---

[5] Respondents stress the fact that petitioner's prayer asks for a "declaratory judgment" and quote language from decisions of this Court that speak of a judicial discretion to deny such relief. See, *e. g.*, *Aetna Life Ins. Co.* v. *Haworth*, 300 U. S. 227, 240–241; *Brillhart* v. *Excess Ins. Co.*, 316 U. S. 491, 494–495; *Public Service Comm'n* v. *Wycoff Co.*, 344 U. S. 237, 241–245. Such cases are not applicable. The judicial discretion to deny declaratory relief is in the penumbra of the constitutional requirement of "case or controversy." There is no such issue here. Discretion, if it exists at all, must stem from the general equity notions based on the availability of other remedies. Indeed, petitioner's request for declaratory relief is no more than an inartistic demand that the federal judge entertain the motion and "receive evidence on any issue of fact necessary to the decision of the motion." Rule 41 (e). That it is denominated as a request for declaratory judgment is mere surplusage.

[6] See, *e. g.*, *Harkrader* v. *Wadley*, 172 U. S. 148; *Ex parte Young*, 209 U. S. 123.

The rationale of *Rea* v. *United States*, *supra*, was that the federal courts had a specific duty of supervising compliance of federal law enforcement officers with the Federal Rules of Criminal Procedure. "A federal agent has violated the federal Rules governing searches and seizures—rules prescribed by this Court and made effective after submission to the Congress. See 327 U. S. 821 *et seq.* The power of the federal courts extends to policing those requirements and making certain that they are observed." *Id.*, 217. The *Rea* case is now distinguished because in that case other contacts with the federal courts existed beyond the bare fact that federal officers were the actors in the illegal search. The additional contacts in the *Rea* case were three: (1) The search was made under a purported warrant of the federal courts. (2) An indictment based on the acquisition of the seized narcotics was filed in the federal court, although subsequently dismissed. (3) A motion to suppress was made in the federal court, while the indictment was pending, and was granted.

Those factual differences should not lead to a different result in this case. The decisive factor, indeed the only relevant one in this case, as in *Rea*, is that federal law enforcement officers are the actors in an illegal search and seizure.

If the officers in *Rea* had acted without any warrant, the result would not have been different. The victim of the search could certainly have obtained an order of suppression against the use of the evidence in the federal courts. Rule 41 (e) specifically so provides. The motion to suppress might have been made before an indictment was filed. Again, the victim would be entitled to an order regarding the use of the evidence in federal courts. See *Go-Bart Co.* v. *United States*, 282 U. S. 344, 358. The federal agents would not be "flouting" the Rules any the less, if, in either of these two situations, they had, after the issue of the order under Rule 41 (e), prepared to use the suppressed evidence in a state court.

To be sure no federal indictment was ever filed in this case; and the state proceeding was commenced prior to the issue of any order by a federal court on the legality of the search and seizure made by the federal law officers. That fact affords no reason why the victim of lawless federal police may not apply to a federal court for relief. When the Court relies on this circumstance it repudiates the very basis of the *Rea* decision, *viz.*: that the substantive command of the Federal Rules of Criminal Procedure has been "flouted" by federal officers.

Under the Fourth Amendment, the judiciary has a special duty of protecting the right of the people to be let alone, except as warrants issue on a showing of probable cause. This special relation of federal courts to the control of federal officials who lawlessly invade the privacy of individual citizens reaches far back into history. It had, at first, an ominous note, as the courts themselves were the instrument of oppression. It was before a colonial court that James Otis, Jr. made his plea against the infamous "writs of assistance."[7] Since then the courts have played an honorable role in the protection of privacy. Warrants, which were at the start only a form of judicial protection extended to officials, have become the means for protecting the individual. A judicial officer has been interposed between the suspicious official and the citizen.[8] The role of the courts has been active. In *Weeks* v. *United States*, 232 U. S. 383, 391–392, this Court said:

> "The effect of the Fourth Amendment is to put the courts of the United States and Federal officials, in

---

[7] See *Boyd* v. *United States*, 116 U. S. 616, 624–625; *Harris* v. *United States*, 331 U. S. 145, 155, 157–159 (dissenting opinion); *Frank* v. *Maryland*, 359 U. S. 360, 374, 376–381 (dissenting opinion).

[8] This same evolution whereby the judiciary became the protectors of privacy took place in England. "[F]or these warrants are judicial acts, and must be granted upon examination of the fact." 2 Hale, History of the Pleas of the Crown (1st Am. ed. 1847), 150.

> the exercise of their power and authority, under limitations and restraints as to the exercise of such power and authority, and to forever secure the people, their persons, houses, papers and effects against all unreasonable searches and seizures under the guise of law. This protection reaches to all alike, whether accused of crime or not, and the duty of giving it force and effect is obligatory upon all entrusted under our Federal system with the enforcement of the laws."

That case forged the doctrine, now firmly entrenched, that the federal courts will not admit illegally seized property as evidence.* It is this doctrine which was the core of the substantive command whose procedural outlines are reflected in Rule 41 (e). It is this doctrine that we unsympathetically reject today.

Our cases reflect the belief that federal judges have a distinct mission to perform in actively protecting the right of privacy of the individual. We said in *Johnson* v. *United States*, 333 U. S. 10, 14:

> "Any assumption that evidence sufficient to support a magistrate's disinterested determination to issue a search warrant will justify the officers in making a search without a warrant would reduce the Amendment to a nullity and leave the people's homes secure only in the discretion of police officers."

This particular view reflected the deep-lying assumption that the command of the Fourth Amendment im-

---

* See, *e. g.*, *Silverthorne Lumber Co.* v. *United States*, 251 U. S. 385; *Gouled* v. *United States*, 255 U. S. 298; *Go-Bart Co.* v. *United States*, 282 U. S. 344; *Taylor* v. *United States*, 286 U. S. 1; *Harris* v. *United States*, 331 U. S. 145; *Johnson* v. *United States*, 333 U. S. 10; *Brinegar* v. *United States*, 338 U. S. 160; *Miller* v. *United States*, 357 U. S. 301; *Draper* v. *United States*, 358 U. S. 307; *Henry* v. *United States*, 361 U. S. 98; *Elkins* v. *United States*, 364 U. S. 206; *Rios* v. *United States*, 364 U. S. 253.

plies continuous supervision by the judiciary over law enforcement officers quite different from the passive role which courts play in some spheres. The rule that a search, otherwise legal, may be illegal for failure to apply to a magistrate for a warrant was expressed in *Trupiano* v. *United States*, 334 U. S. 699, and *McDonald* v. *United States*, 335 U. S. 451. We stated "that search warrants are to be obtained and used wherever reasonably practicable." *Trupiano* v. *United States*, *supra*, 709. We have occasionally retreated as *United States* v. *Rabinowitz*, 339 U. S. 56; *Frank* v. *Maryland*, 359 U. S. 360; and *Abel* v. *United States*, 362 U. S. 217, show. But we returned to the basic philosophy of the Fourth Amendment in *Rea* v. *United States*, *supra*. When I wrote for the Court in that case saying that "[t]he obligation of the federal agent is to obey the Rules," I thought we meant obedience to the substantive law for which those rules offer a procedural matrix.[10] It is difficult for me to believe that that protection is limited to those situations where the federal officers invoke the "process" of the federal court. Rule 41 (e) provides a remedy by way of suppression where "the property was illegally seized without warrants," as it was in this case, if the allegations are supported by evidence.

When we forsake *Rea* v. *United States* and tell the federal courts to keep hands off, we wink at a new form of official lawlessness. Federal officials are now free to violate the Federal Rules that were designed to protect the individual's privacy, provided they turn the evidence

---

[10] It is said that the present proceeding is not one under Rule 41 (e), since there are no federal "proceedings" within the meaning of the enabling statute. 18 U. S. C. § 3771. But the policy remains the same, and the analogy of an independent suit based on the same rights is clear. Nor can it be said that 21 U. S. C. § 198 (a) creates any exemption for federal officers from the standards otherwise imposed on them. Cooperate they may, but they may not break the law to do so.

unlawfully obtained over to the States for prosecution. This is an evasion of federal law that has consequences so serious that I must dissent. This case may be inconsequential in the tides of legal history. But the rule we fashion is an open invitation to federal officials to "flout" federal law, to make such searches as they desire, to forget about the search warrants required by the Fourth Amendment, to break into homes willy-nilly, and then to repair to state courts. There the Federal Rules do not apply; there the exclusionary rule of *Weeks* v. *United States*, *supra*, does not apply. See *Wolf* v. *Colorado*, *supra*. There evidence, unlawfully obtained by the standards that govern federal officials, may be used against the victim. A few States have exclusionary rules as strict as those commanded by the Fourth Amendment.[11] Many permit the use in state prosecutions of evidence which would be barred if tendered in federal prosecutions.[12] The tender regard which is expressed for federal-state relations will in ultimate effect be a tender regard for federal officials who flout federal law. Today we lower federal law enforcement standards by giving federal agents *carte blanche* to break down doors, ransack homes, search and seize to their heart's content—so long as they stay away from federal courts and do not try to use the evidence there. This is an invitation to lawlessness which I cannot join.

---

[11] See, *e. g.*, Texas Code of Crim. Proc., Art. 727a, as amended by Acts 1953, 53d Leg., p. 669, c. 253, § 1; *People* v. *Cahan*, 44 Cal. 2d 434, 282 P. 2d 905.

[12] See, *e. g.*, *People* v. *Gonzales*, 356 Mich. 247, 97 N. W. 2d 16.